PHILIPPINE REPORTS

VOL. 781

FEBRUARY 15, 2016 TO FEBRUARY 29, 2016

VOLUME 781

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 15, 2016 TO FEBRUARY 29, 2016

SUPREME COURT
MANILA
2017

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 205814. February 15, 2016]

SPOUSES ALFREDO TEAÑO[*] and VERONICA TEAÑO, *petitioners, vs.* **THE MUNICIPALITY OF NAVOTAS, represented by MAYOR TOBIAS REYNALD M. TIANGCO, and MUNICIPAL TREASURER MANUEL T. ENRIQUEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; COVERS CIVIL ACTIONS OF THE REGIONAL TRIAL COURTS (RTCs) WHERE THE ORDINARY REMEDIES ARE NO LONGER AVAILABLE WITHOUT FAULT OF THE PETITIONER.—** Section 1, Rule 47 of the Rules of Court provides that annulment of judgments or final orders, and resolutions covers civil actions of the RTCs where the remedies of new trial, appeal, petition for relief and other remedies are no longer available through no fault of the petitioner. x x x As aptly explained by the Court in *Dare Adventure Farm Corporation v. Court of Appeals*: A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud.

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[*] Spelled as Teano in some parts of the records.

2. ID.; ID.; ID.; MUST BE BASED ONLY ON THE GROUNDS OF EXTRINSIC FRAUD AND OF LACK OF JURISDICTION COMMENCED BY A VERIFIED PETITION THAT SPECIFICALLY ALLEGES THE FACTS AND THE LAW RELIED UPON FOR ANNULMENT.— [A]nnulment of judgment must be based only on the grounds of extrinsic fraud, and of lack of jurisdiction. At the same time, it is required that it must be commenced by a verified petition that specifically alleges the facts and the law relied upon for annulment. x x x Extrinsic fraud is "that which prevented the aggrieved party from having a trial or presenting his case to the court, or used to procure the judgment without fair submission of the controversy." On the other hand, lack of jurisdiction involves the want of jurisdiction over the person of the defending party or over the subject matter of the case.

APPEARANCES OF COUNSEL

Eufracio T. Layag for petitioners.
Emmanuel M. Pantoja for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the September 18, 2012 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 126426 dismissing the Petition for Annulment of Summary Judgment filed by spouses Alfredo Teaño and Veronica Teaño (petitioners). Also assailed is the January 21, 2013 CA Resolution[2] denying reconsideration of its September 18, 2012 Resolution.

Factual Antecedents

On December 8, 2005, petitioners filed a Complaint[3] against the Municipality of Navotas (now Navotas City) (the Municipality),

[1] CA *rollo*, p. 25; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca de Guia-Salvador and Apolinario D. Bruselas, Jr.

[2] *Id.* at 83-84.

[3] *Rollo*, pp. 40-50.

represented by Mayor Tobias Reynald M. Tiangco (Mayor), and Municipal Treasurer Manuel T. Enriquez (Municipal Treasurer) (respondents) for quashal of warrants of levy with application for preliminary injunction and/or Temporary Restraining Order (TRO). The case was filed before the Regional Trial Court of Malabon (RTC), raffled to Branch 74 thereof, and docketed as Civil Case No. 4656-MN.

Petitioners claimed that they were the registered occupants of parcels of land with improvements situated inside the National Housing Authority Industrial Development Project (NHAIDP), C-3 Road, Northbay Boulevard South, Navotas, particularly described as follows:

A. LOT 24, Phase II A/B, containing an area of 730 square meters, more or less, covered by TAX DECLARATION No. C-002-00081-C issued by the Assessor's Office of Navotas, Metro Manila, owned by the National Housing Authority.

B. Lot 25, Phase II A/B, containing an area of 700 square meters, more or less, covered by TAX DECLARATION No. C-002-07082-C, owned by the National Housing Authority.

C. L.M. of CHB WALL FENCE (465 floor area) formerly covered by Tax Declaration No. C-002-0548, now covered by Tax Declaration No. C-002- 08088-1.

D. INDUSTRIAL IMPROVEMENT (formerly covered by Tax Declaration No. C-002-05849, now covered by Tax Declaration No. C-002-08089-1, consisting of Hanger Industrial Building; Hanger Industrial Building; Extra T & B ordinary finish; Extra T & B ordinary finish.[4]

Petitioners alleged that they were also the registered owners of a residential improvement situated at Gov. Pascual St. corner Union St., San Jose, Navotas, covered by Tax Declaration No. C-010-03062-R.[5]

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[4] *Id.* at 41.

[5] *Id.*

According to petitioners, sometime in July 2005, they received a Final Notice to Collect Real Property Tax (Notice) from the Municipal Treasurer's Office demanding the payment of real estate taxes on the foregoing properties amounting to ₱5,702,658.74 for the years 1990 to 2005. They averred that on August 22, 2005, they answered the Notice contending that respondents' right to collect realty tax from 1990 to 2000 had prescribed. They also claimed that they were exempt from real property tax from 2001 to 2003 because on January 7, 2001, a fire razed the machineries at the NHAIDP compelling them to lease another building from 2001 to 2003. In 2004, they reoccupied the reconstructed building in C-3 Road, Northbay Boulevard South, Navotas, without any machinery.[6]

Petitioners pleaded upon respondents to condone the realty taxes on their properties. Instead of answering, respondents issued four warrants of levy against petitioners.[7]

Petitioners argued that other than the warrant of levy on their residential house, the realty taxes being collected against them were improper for being violative of their right to due process, and for being unconscionable, abusive and contrary to law. They prayed for the issuance of a TRO to restrain respondents from enforcing the Warrants of Levy through a public auction on December 21, 2005.[8] However, the RTC did not issue a TRO against said warrants of levy.[9]

Subsequently, petitioners filed a Motion for Summary Judgment, which was granted on June 13, 2005.[10]

In the meantime, the Municipality pushed through with the public auction scheduled on December 21, 2005.

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[6] *Id*. at 41-43.

[7] *Id*. at 43-44.

[8] *Id*. at 47-49.

[9] As culled from the RTC Order dated August 13, 2008; *rollo*, p. 82.

[10] As stated in the Summary Judgment June 29, 2007; CA *rollo,* 19.

On June 29, 2007, the RTC rendered its Summary Judgment[11] dismissing the case for lack of jurisdiction. It decreed that pursuant to Sections 226[12] and 229[13] of the Local Government Code (LGC), petitioners should have appealed the Municipal Treasurer's assessment to the Local Board of Assessments Appeals. If unsatisfied, they may thereafter appeal to the Central Board of Assessment Appeals.

Petitioners filed a Motion for Reconsideration.[14]

---

[11] *Id*. at 19-21; penned by Assisting Judge Leonardo L. Leonida.

[12] Section 226. *Local Board of Assessment Appeals*. – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[13] Section 229. *Action by the Local Board of Assessment Appeals*. – (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

[14] As stated in the RTC Order dated September 21, 2007; *rollo*, p. 73.

In an Order[15] dated September 21, 2007, the RTC held, among others, that pursuant to Sections 250[16] and 270[17] of the LGC, respondents' right to collect realty taxes on petitioners' real properties from 1990 to 2000 had already prescribed. Hence, it set aside its June 29, 2007 Judgment and disposed of the case as follows:

> WHEREFORE, in view of the foregoing, the Court's Summary Judgment dated 29 June 2007 dismissing the instant complaint is hereby RECONSIDERED AND SET ASIDE. x x x [T]he dismissal of the instant complaint is hereby recalled. Defendants are hereby ordered to assess and collect only the realty taxes due on plaintiffs' properties beginning the years from 2001 to 2005.
>
> SO ORDERED.[18]

On December 11, 2007, petitioners filed a Motion to Clarify Intent of Judgment[19] raising the following queries:

> (a) Whether x x x by ordering the [respondents] to 'assess and collect only the realty taxes due on [petitioners] properties

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[15] *Rollo*, 73-75; penned by Assisting Judge Leonardo L. Leonida.

[16] Section 250. *Payment of Real Property Taxes in Installments*. — The owner of the real property or the person having legal interest therein may pay the basic real property tax and the additional tax for Special Education Fund (SEF) due thereon without interest in four (4) equal installments: the first installment to be due and payable on or before March thirty-first (31st); the second installment, on or before June Thirty; the third installment, on or before the September Thirty (30); and the last installment on or before December thirty-first (31st), except the special levy the payment of which shall be governed by ordinance of the sanggunian concerned.

[17] Section 270. *Periods Within Which to Collect Real Property Taxes*. — The basic real property tax and any other tax levied under this Title shall be collected within five (5) years from the date they become due. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from the discovery of such fraud or intent to evade payment.

[18] *Rollo*, p. 75.

[19] *Id.* at 76-80.

beginning the years from 2001 to 2005' the four (4) warrants of levy were in effect quashed in the sense that realty taxes sought to be collected through said warrant of levy on years prior to year 2001 are no longer collectible[;]

(b) Should the answer to the above query be in the affirmative then, does it necessarily follow that the public auction conducted by [respondents] on December 21, 2005 affecting [petitioners'] property (particularly the industrial improvements) and machinery which sought to collect realty taxes prior to 2001, becomes invalid and ineffective?

(c) It is not disputed even by [respondents] that [petitioners'] industrial improvement and machinery were razed by fire on January 7, 2001 and that the factory building was reconstructed and reo[c]cupied only beginning the year 2004 (but this time with no more machinery), the question is, is it the intent of the Judgment to order the [respondents] to collect realty taxes pertaining to the years 2001 to 2003 inclusive, despite the then factual condition of the subject property? Or is the better procedure to require defendants to assess and collect realty taxes on the subject industrial improvement only from years 2004 to present?[20]

On August 13, 2008, the RTC issued a Resolution[21] holding that the September 21, 2007 Order is final and executory as neither party moved for its reconsideration. Nevertheless, it clarified that the four warrants of levy are not quashed since neither the June 29, 2007 Summary Judgment nor the September 21, 2007 Order pronounced the quashal thereof; the public auction sale conducted on December 21, 2005 is valid but since it was conducted prior to the September 21, 2007 Order – which decreed that only taxes accruing from 2001 may be collected – any amount representing taxes accruing prior to 2001 collected from petitioners must either be refunded to or treated as tax credit in favor of petitioners; and taxes for industrial improvement and machinery for the years 2001 to 2003 may be collected.

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[20] *Id*. at 79; emphases omitted.

[21] *Id*. at 81-90; penned by Judge Celso R.L. Magsino, Jr.

Petitioners filed a motion for reconsideration which was denied by the RTC in its Resolution[22] dated December 9, 2008.

Four years after or on September 7, 2012, petitioners filed with the CA a Petition[23] denominated as one "for Annulment of Summary [Judgment] with Prayer for [Preliminary] Mandatory Injunction [and/or] Temporary Restraining Order." Notably, aside from the allegation that the demand to vacate the subject properties and/or the collection of ₱5,702,658.74 is irregular, unlawful, and malicious as it wantonly disregarded the RTC Summary Judgment,[24] the Petition is bereft of any particulars as to the judgment, resolution or order of the RTC which it seeks to annul and the ground upon which it is anchored.

Ruling of the Court of Appeals

On September 18, 2012, the CA issued the assailed Resolution dismissing the Petition, the pertinent portion of which reads:

> Upon review of the instant petition, it appears that the same have the following defects: 1.) There is no allegation of whether the grounds for the petition for annulment of judgment is based on extrinsic fraud or lack of jurisdiction as required under Sec. 2, Rule 47 of the Rules of Court[;] 2.) Petitioners did not state the date when they received the assailed summary judgment[;] 3.) There is no affidavit of service[;] and 4.) The parties' respective position papers are not attached.[25]

Petitioners filed a Motion for Reconsideration. Surprisingly, however, petitioners expounded on the argument that they properly resorted to a petition for *certiorari* when what they actually filed was a petition captioned as one for annulment of judgment, the contents of which were not at all constitutive of a *certiorari* petition.

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[22] *Id*. at 91.

[23] CA *rollo*, pp. 3-8.

[24] *Id*. at 5.

[25] *Id*. at 25.

Thus and as can be expected, the CA denied[26] said Motion in its Resolution of January 21, 2013, *viz*.:

In said motion, counsel for petitioner asserted that a petition for certiorari was the proper remedy for them to avail in this case. However, it appears that what they have filed in this case was a petition for annulment of judgment which was dismissed by the Court in its Resolution dated September 18, 2012 considering that it was not based on the grounds of extrinsic fraud or lack of jurisdiction as required under Section 2, Rule 47 of the Rules of Court.

WHEREFORE, the instant motion is hereby DENIED for lack of merit.[27]

Hence, petitioners filed this Petition raising the following grounds:

THE COURT OF APPEALS DISPOSED OF THE PETITION FOR CERTIORARI (*FILED UNDER RULE 65, 1997 RULES OF CIVIL PROCEDURE, AS AMENDED)* IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE TRIBUNAL. THIS HAPPENED WHEN:

THE COURT OF APPEALS CHOSE TO APPLY THE RULES IN A VERY STRINGENT MANNER, NOTWITHSTANDING THAT THE LAPSES COMMITTED BY THE PETITIONERS THAT PROMPTED THE APPELLATE COURT TO DISMISS THE PETITION WERE PURELY TECHNICAL IN CHARACTER BUT WERE, HOWEVER, SUBSTANTIALLY REMEDIED BY THE SUBSEQUENT FILING OF THEIR MOTION FOR RECONSIDERATION.[28]

Petitioners claim that in dismissing their Petition, the CA focused heavily on its technical defects. They insist that their belated submission to the CA of the lacking attachments to their Petition should be considered as substantial compliance. Petitioners also admit that they "had mixed up their discussions in the Motion for Reconsideration [with the CA] by arguing

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[26] *Id*. at 83-84.

[27] *Id*. at 83.

[28] *Rollo*, p. 9.

that *certiorari* was the proper remedy against the questioned resolution and order of the respondent judge, when in fact what they had filed was a petition for annulment of judgment x x x."[29] They nevertheless contend that such an error is only technical in character. Simply stated, petitioners argue that the CA erred in dismissing their petition based on technicalities.

Petitioners contend that the RTC, in issuing the August 13, 2008 Order, attempted to amend the September 21, 2007 Order which has already attained finality, and also to validate an auction sale that is void from the beginning. They explain that "in trying to validate an illegal auction sale through the Resolution dated August 13, 2008, [the RTC] acted without jurisdiction, thus necessitating the annulment of said resolution under Rule 47 of the Rules of Civil Procedure, as amended."[30]

For its part, the Municipality insists that the CA correctly dismissed the Petition filed by petitioners (CA Petition). It claims that petitioners themselves captioned the CA Petition as one for annulment of summary judgment, which must be based only on two grounds, extrinsic fraud and lack of jurisdiction. It adds that since petitioners failed (1) to allege in the CA Petition the basis for its filing and their date of receipt of the RTC issuance that they were assailing; and, (2) to attach essential pleadings/ documents, such as the parties' respective position papers and an affidavit of service, then the CA properly dismissed the Petition outright.

Finally, the Municipality asserts that even if the CA Petition is to be treated as Rule 65 Petition, still, it cannot be given due course for having been filed out of time, and for petitioner's failure to comply with the mandatory requirements to allege facts with certainty and to attach all relevant documents to the Petition.

Our Ruling

The Petition lacks merit.

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[29] *Id*. at 15.

[30] *Id*. at p. 20; emphasis omitted.

At the outset, it is worth noting that petitioners made varying claims as regards the legal remedy it availed of before the CA.

To clarify, petitioners filed with the CA a petition captioned as "Annulment of Summary [Judgment] with Prayer for [Preliminary] Mandatory Injunction [and/or] Temporary Restraining Order." However, petitioners failed to allege therein with particularity the facts and law relied upon for the annulment, such that the CA, among other reasons, denied the same. When petitioners filed a motion for reconsideration with said court, petitioners' line of arguments was suddenly geared towards their resort to a *certiorari* petition which, in the first place, was not the remedy it availed of when it filed the CA Petition. Be that as it may, petitioners now clarify that the CA Petition is indeed a petition for annulment of judgment and that they have just "mixed up their discussions in the Motion for Reconsideration [with the CA] by arguing that *certiorari* was the proper remedy against the questioned [RTC] resolution and order."[31] Petitioners now pray, among others, that the RTC Resolution dated August 13, 2008 and its Order dated December 9, 2008 be annulled for having been issued without jurisdiction pursuant to Rule 47 of the Rules of Court.[32]

Based on petitioners' admission and clarification, the Court holds that the petition for annulment of judgment filed with the CA relates to the August 13, 2008 RTC Resolution resolving petitioners' Motion to Clarify Intent of Judgment and its December 9, 2008 Order denying reconsideration therefrom.

Section 1,[33] Rule 47 of the Rules of Court provides that annulment of judgments or final orders, and resolutions covers civil actions of the RTCs where the remedies of new trial, appeal,

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[31] *Id*. at 15.

[32] *Id*. at 21.

[33] Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (n)

petition for relief and other remedies are no longer available through no fault of the petitioner. Annulment of judgment is an exceptional remedy in equity that may be availed of when ordinary remedies are unavailable without fault on the part of the petitioner. As aptly explained by the Court in *Dare Adventure Farm Corporation v. Court of Appeals*:[34]

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. x x x

Clearly, annulment of judgment must be based only on the grounds of extrinsic fraud, and of lack of jurisdiction.[35] At the

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[34] G.R. No. 161122, September 24, 2012, 681 SCRA 580, 586-587.

[35] RULES OF COURT, Rule 47, Section 2.

Section 2. *Grounds for Annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (n)

same time, it is required that it must be commenced by a verified petition that specifically alleges the facts and the law relied upon for annulment.[36]

In this case, the CA Petition contained these allegations:

5. On December 15, 2006[,] petitioners filled [sic] (MOTION for SUMMARY [JUDGMENT] x x x

6. On August 21[,] 2007[,] the petitioner received the copy of demand to vacate and turn over the property x x x

7. The petitioner where [sic] taken aback when petitioner received demand and to collect taxes in the amount of (Php. 5,702,658.74)

8. On August 28, 2012[,] the petitioner received a copy of the demand to vacate City Government Property without reservation or without due process or mandated by the constitution of the Philippines (no person shall be deprive [sic] of life, liberty and property without due process of law)

9. That the implementation or intended implementation of the demand to vacate City Government Property and/or collect the sum of (Php. 5,702,658.74) irregular unlawful [sic] and malicious for wanton disregard of ultimate paragraph of Summary Judgment[.][37]

While the CA Petition does not need to state categorically the exact words "extrinsic fraud" or "lack of jurisdiction" as grounds for the annulment of judgment, still, it is necessary that the allegations should be so crafted to establish the ground on which the petition is based.[38]

Here, the CA Petition does not specify any ground relied upon for its filing. In other words, there is no clear indication

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[36] RULES OF COURT, Rule 47, Section 4.

Section 4. *Filing and Contents of Petition*. — The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

x x x x x x x x xx

[37] CA *rollo*, p. 5.

[38] *Castigador v. Nicolas*, G.R. No. 184023, March 4, 2013, 692 SCRA 333, 337.

that the Petition was based on the ground of either extrinsic fraud or lack of jurisdiction.

In insisting that they properly filed a petition for annulment, petitioners belatedly state in the present Petition that the RTC tried to validate an illegal auction through its August 13, 2008 Resolution; and thus, it acted without jurisdiction, which necessitates the annulment of said Resolution under Rule 47 of the Rules of Court.[39]

As stated, extrinsic fraud and lack of jurisdiction are the sole and exclusive grounds for an annulment of judgment. Extrinsic fraud is "that which prevented the aggrieved party from having a trial or presenting his case to the court, or used to procure the judgment without fair submission of the controversy."[40] On the other hand, lack of jurisdiction involves the want of jurisdiction over the person of the defending party or over the subject matter of the case.[41]

The belated claim of petitioners that the RTC acted without jurisdiction because of its alleged validation of an illegal auction does not qualify as lack of jurisdiction contemplated as ground for annulment of judgment. Verily, the RTC duly acquired jurisdiction over the person of petitioners when they filed the complaint. It also has jurisdiction over its subject matter as the same is cognizable by the RTC.[42]

All told, there being no substantial merit in the CA Petition, the CA properly dismissed it outright.[43]

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[39] *Rollo*, p. 20.

[40] *Capacete v. Baroro,* 453 Phil. 392, 401 (2003).

[41] *Id*.

[42] *Id.*

[43] RULES OF COURT, Rule 47, Section 5.

Section 5. *Action by the Court*. — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent. (n)

WHEREFORE, the Petition is **DENIED**. The September 18, 2012 and January 21, 2013 Resolutions of the Court of Appeals in CA-G.R. SP No. 126426 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), *Mendoza,* and *Leonen, JJ.,* concur.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 210233. February 15, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE COURT OF APPEALS, SPOUSES RODOLFO SY AND BELEN SY, LOLITA SY, and SPOUSES TEODORICO AND LEAH ADARNA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; OFFICE OF THE SOLICITOR GENERAL (OSG); AS REPRESENTATIVE OF THE GOVERNMENT WHO INITIATED THE CASE AT BAR FOR CANCELLATION OF SALES PATENTS AND THE CORRESPONDING CERTIFICATES OF TITLE, THE OSG IS THE PRINCIPAL COUNSEL THAT MUST BE FURNISHED COPIES OF ALL COURT ORDERS, NOTICES AND PROCEEDINGS.—** It is undisputed that it was the OSG who initiated Civil Case No. CEB-6785 for cancellation of miscellaneous sales patents and the corresponding certificates of title issued to the respondents. As such, it is the counsel of record and remains to be so until the culmination of the case. More importantly, Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, specifically empowers the OSG to "**[r]epresent the Government in** the Supreme Court and **the [CA]** in all criminal

proceedings x x x and all other courts or tribunals **in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party**." Section 35(5), meanwhile, provides that the OSG shall "[r]epresent the Government in all land registration and related proceedings." x x x While the OSG may have deputized the DENR Region VII-Legal Division to assist it in the performance of its functions, it has not totally relinquished its position as counsel for the Republic. The deputized counsel is no more than the "surrogate" of the Solicitor General in any particular proceeding and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. **Hence, any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.**

2. **ID.; ADMINISTRATIVE LAW; RIGHT TO DUE PROCESS; THE REPUBLIC AS LITIGANT IS ENTITLED THERETO. —** It must be stressed that "[t]he essence of due process is the opportunity to be heard, logically preconditioned **on prior notice**, before judgment is rendered." "Notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and together with the tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law." "Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

REYES, *J.:*

Before the Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court assailing the following issuances of

[1] *Rollo,* pp. 3-17.

the Court of Appeals (CA) in CA-G.R. CV No. 02458, to wit: (1) Resolution[2] dated July 5, 2012, which dismissed the Republic of the Philippines' (Republic) appeal for failure to file brief; (2) Resolution[3] dated August 20, 2013, declaring its July 5, 2012 Resolution final and executory; and (3) the Entry of Judgment[4] dated August 21, 2012.

Facts

On March 29, 1988, the Republic, through the Office of the Solicitor General (OSG), instituted an action for the cancellation of miscellaneous sales patents and the corresponding certificates of title issued to the spouses Rodolfo Sy and Belen Sy, and Lolita Sy (respondents), and the reversion of the lands covered by them to the public domain on the ground of fraud and misrepresentation.[5]

The Regional Trial Court (RTC) of Cebu City, Branch 21, rendered judgment in favor of the respondents on October 10, 2007.[6] Its decision provides for the following dispositive portion:

> **WHEREFORE,** all considered, the Court Jinds preponderance of evidence decisively in favor of the [respondents], for which reason the regularity and validity of the patents and corresponding titles in question are upheld and the complaint is therefore DISMISSED, without pronouncement as to costs.
>
> **SO ORDERED.**[7]

The RTC decision was received on November 14, 2007 by Department of Environment and Natural Resources (DENR)

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[2] Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles concurring; *id*. at 31-32.

[3] *Id*. at 36-37.

[4] *Id*. at 35.

[5] *Id*. at 5-6, 19.

[6] Rendered by Presiding Judge Eric F. Menchavez; *id*. at 19-26.

[7] *Id*. at 26.

Region VII-Legal Division, which was the OSG's deputized special counsel, while the OSG received its copy on April 1, 2008. The Republic, through the deputized legal counsel, subsequently filed a notice of appeal on November 23, 2007, which was given due course by the RTC in its order dated December 4, 2007.[8]

A notice to file brief was then sent by the CA to Atty. Ferdinand S. Alberca (Atty. Alberca), Special Counsel of the OSG; Legal Division, DENR, Region VII, Banilad, Mandaue City, and was received on December 1, 2009.[9] It appears, however, that no brief was filed, hence, the CA, in its Resolution dated May 6, 2011, dismissed the Republic's appeal "for failure x x x to file the required brief within the time provided by the Rules of Court."[10] A copy of the said resolution was received by the DENR Region VII-Legal Division on May 17, 2011.[11] On May 19, 2011, a copy of the resolution was transmitted by the DENR Region VII-Legal Division to the OSG, who filed a motion for reconsideration on June 1, 2011.[12]

In its Resolution[13] dated September 14, 2011, the CA granted the OSG's motion and reinstated the appeal, to wit:

> WHEREFORE, premises considered, the [Republic] is hereby **ORDERED** to file its Appellant's Brief within forty-tive (45) days from notice to which the [respondents] may file their Appellee's Brief within forty-five (45) days from receipt of the brief of the [Republic]. The [Republic] may file its Appellant's Reply Brief within twenty (20) days from receipt of the Appellee's Brief.
>
> **SO ORDERED.**[14]

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[8] *Id*. at 6.

[9] *Id*. at 27.

[10] *Id*.

[11] *Id*. at 7.

[12] *Id*.

[13] *Id*. at 27-28.

[14] *Id*. at 28.

The DENR Region VII-Legal Division was, again, furnished a copy of the resolution but the OSG was not.[15]

Subsequently, the CA issued its **Resolution dated July 5, 2012,** dismissing the appeal on account of the Republic's failure to file brief. There being no reconsideration interposed by the Republic, the dismissal of the appeal became final and executory and entry of judgment was made on **August 21,2012.** A year after, the CA issued **Resolution dated August 20, 2013,** declaring its Resolution dated July 5, 2012 as having attained finality on August 21, 2012.

The OSG was not furnished with a copy of the CA Resolutions dated September 14, 2011, July 5, 2012 and August 20, 2013, and the Entry of Judgment dated August 21, 2012. It was only when the Regional Executive Director of the DENR Region VII sent its 1st Indorsement dated September 27, 2013 that the OSG was apprised of the subsequent incidents.[16]

In this petition, the OSG maintains that —

THE [CA] GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL OF THE REPUBLIC ALTHOUGH THE OSG WAS NOT NOTIFIED OF THE RESOLUTION GRANTING THE MOTION TO REINSTATE THE APPEAL AND GIVING THE REPUBLIC A NEW PERIOD OF FORTY-FIVE DAYS TO FILE ITS BRIEF.[17]

The OSG argues that, being the Republic's statutory counsel, it should have been furnished with the CA's resolution reinstating its appeal, not the DENR Region VII-Legal Division. Consequently, there was a violation of the Republic's right to due process and the CA committed grave abuse of discretion in declaring the reglementary period within which to file its appellant's brief had lapsed.[18]

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[15] *Id*. at 8.

[16] *Id*. at 8-9.

[17] *Id*. at 9.

[18] *Id*. at 13.

The respondents' counsel, on the other hand, sought excuse from filing a comment due to the refusal of the heirs of Leah Adarna to cooperate with him.[19]

Ruling of the Court

The petition must be granted.

It is undisputed that it was the OSG who initiated Civil Case No. CEB-6785 for cancellation of miscellaneous sales patents and the corresponding certificates of title issued to the respondents.[20] As such, it is the counsel of record and remains to be so until the culmination of the case. More importantly, Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, specifically empowers the OSG to **"[r]epresent the Government in** the Supreme Court and **the [CA]** in all criminal proceedings x x x and all other courts or tribunals **in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party."** Section 35(5), meanwhile, provides that the OSG shall "[r]epresent the Government in all land registration and related proceedings." The CA was, in fact, well aware of this. In its Resolution dated September 14, 2011 reinstating the Republic's appeal, theCA recognized the role of the OSG as the principal counsel in the appellate proceedings, *viz:*

> A closer scrutiny of the records of the case reveals that the Notice to File Brief was sent to and received by [Atty. Alberca], Special Counsel of the OSG Legal Division, DENR, Region VII, Banilad, Mandaue City on December 01, 2009 as evidenced by the Registry Return Receipt.
>
> Mindful of the provision in Section 35 (1), Chapter 12, Title III of the Administrative Code of 1987 which provides for the powers and functions of the [OSG] which is the official counsel for government agencies in cases before this Court, to wit:
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> x x x x x x x x x[21]

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[19] *Id*. at 45-47.

[20] *Id*. at 5-6, 19.

[21] *Id*. at 27-28.

It is therefore rather peculiar that the CA failed to furnish the OSG with a copy of its Resolution dated September 14, 2011, and even continued to neglect to furnish the OSG with copies of all its subsequent resolutions. Instead, it kept sending them to Atty. Alberca of the DENR Region VII- Legal Division. While the OSG may have deputized the DENR Region VII-Legal Division to assist it in the performance of its functions, it has not totally relinquished its position as counsel for the Republic. The deputized counsel is no more than the "surrogate" of the Solicitor General in any particular proceeding and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. **Hence, any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.**[22]

It must be stressed that "[t]he essence of due process is the opportunity to be heard, logically preconditioned **on prior notice,** before judgment is rendered."[23] "Notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and together with the tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law."[24] "Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants."[25]

Consequently, it is clear that the issuance of CA Resolutions dated July 5, 2012 and August 20, 2013, and the Entry of Judgment dated August 21, 2012 was tainted with grave abuse of discretion. In *Republic of the Philippines v. Heirs of Evaristo Tiotioen,*[26] the Court even emphatically ruled that "the belated

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[22] *The Director of Lands v. Judge Medina,* 311 Phil. 357, 369 (1995).

[23] *Republic v. Caguioa,* G.R. No. 174385, February 20, 2013, 691 SCRA 306, 319.

[24] *San Andres v. CA,* GR. No. 78341, August 3, 1992, 212 SCRA 1, 6.

[25] *Republic v. Caguioa, supra* note 23.

[26] 589 Phil. 145 (2008).

filing of an appeal by the State, or even its failure to file an opposition, in a land registration case because of the mistake or error on the part of its officials or agents does not deprive the government of its right to appeal from a judgment of the court."[27]

WHEREFORE, the petition is **GRANTED**. The Resolutions dated July 5, 2012 and August 20, 2013 of the Court of Appeals in CA-G.R. CV No. 02458 are hereby **ANNULLED** and **SET ASIDE**, and the Republic of the Philippines' appeal is **REINSTATED**. Moreover, the Entry of Judgment dated August 21, 2012 is **ORDERED** stricken off from its Book of Entries of Judgment.

Let this case be remanded to the Court of Appeals for continuation of the appellate proceedings.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Perez, JJ.,* concur.

EN BANC

[A.M. No. P-16-3423. February 16, 2016]
(Formerly A.M. No. 13-9-89-MTCC)

RE: CIVIL SERVICE EXAMINATION IRREGULARITY (IMPERSONATION) OF MS. ELENA T. VALDEROSO, Cash Clerk II, Office Of The Clerk Of Court, Municipal Trial Court In Cities, Antipolo City

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[27] *Id*. at 153.

[*] Designated Additional Member per Raffle dated February 18, 2015 *vice* Associate Justice Francis H. Jardeleza.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; IMPERSONATION; CLAIMS OF GOOD FAITH, REJECTED.—** Valderoso herself acknowledged, in her Answer, that another person took the examination in her behalf. This court, however, finds no merit to her defense that the same was done without her knowledge and that it was Matignas who perpetrated the unauthorized substitution. In *Donato, Jr. v. Civil Service Commission,* this Court approved the findings of the CSC and ruled that: "In the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons — **(CSC Resolution No. 94-6582)**. x x x In cases of impersonation, the Commission has consistently rejected claims of good faith, for "*it is contrary to human nature that a person will do (impersonation) without the consent of the person being impersonated.* **(CSC [R]esolution No. 94-0826)**"

2. **ID.; ID.; ID.; DISHONESTY; SERIOUS DISHONESTY PUNISHABLE BY DISMISSAL FROM SERVICE; IN VIEW OF RESIGNATION, FORFEITURE OF ALL BENEFITS DUE EXCEPT ACCRUED LEAVE CREDITS AND DISQUALIFICATION FROM ANY FUTURE GOVERNMENT SERVICE, DEEMED PROPER.—** Valderoso's action constitutes dishonesty. It is "a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary." Under Section 46A(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, serious dishonesty is considered a grave offense punishable by dismissal from the service. x x x [R]esignation should not be used either as an escape or as an easy way out to evade an administrative liability or an administrative sanction. Valderoso's resignation, however, would affect the penalty imposable against her. The penalty of dismissal arising from the offense was rendered moot by virtue of her resignation. Thus, this Court find the recommendation of the OCA to be appropriate under the circumstances and impose upon Valderoso the penalty of forfeiture of all benefits due her, except accrued

leave credits and her disqualification from any future government service.

D E C I S I O N

***PER CURIAM*:**

In a letter[1] dated July 11, 2013, Atty. Ariel G. Ronquillo (Atty. Ronquillo), Assistant Commissioner, Civil Service Commission (CSC), referred to the Office of the Court Administrator (OCA), for appropriate action, the alleged involvement in an examination irregularity (impersonation) of respondent Elena T. Valderoso (Valderoso), Cash Clerk II, Office of the Clerk of Court (OCC), Municipal Trial Court in Cities (MTCC), Antipolo City, Rizal.

According to Atty. Ronquillo, on March 23, 2013, Valderoso requested for the authentication/verification of her civil service eligibility with the CSC. The said request was made due to her application for promotion from Cash Clerk II to Cashier. Upon validation of the identity of Valderoso, however, the Integrated Records Management Office (IRMO) noted several discrepancies in the facial features and signatures of Valderoso as compared to the Picture-Seat-Plan (PSP) of the Career Service Professional examination held on October 16, 1994 in Quezon City. The evaluation contained in IRMO Memo No. 542, s. 2013,[2] signed by Maria Leticia G. Reyna, Director IV, particularly noted the following differences:

	PSP	**ID**
1. Physical Features		
a. Hair Texture	-	-
b. Hairline	-	-
c. Face	Oval	Semi-round
d. Forehead	-	-

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[1] *Rollo,* p. 1.

[2] *Id.* at 2.

e. Eyebrow	Long & arched towards the side	Semi-arched
f. Eyes	Rounded	Down slant
g. Nose	Medium	Narrow
h. Mouth/Lips	Small; thick lower lip	Medium
i. Ears	Rectangular	Oval; close to head
j. Cheek	Sunken	Filled-out
k. Chin	Small/pointed	Normal/oval
1. Neck	Long	Short
2. Signature	Both semi-personalized but with different strokes	

Moreover, the On-the-Spot Investigation Report[3] dated May 23, 2013 of the Office for Legal Affairs of CSC stated that upon questioning, Valderoso insisted that she was the one who took the October 16, 1994 civil service examination and that she was not aware of any other person with the same name as hers who also took the examination on the same day. When Valderoso, however was instructed to sign in the back page of the Report to have a comparison of the specimen signature, the investigator found the same to be incomparable particularly in the strokes of the handwriting.

Due to the discovery of the discrepancies, Valderoso manifested that she is no longer inclined to have her eligibility authenticated and requested that any report on the matter be submitted to her instead to this Court.

In the 1st Indorsement[4] dated October 4, 2013, the OCA directed Valderoso to submit her Comment to the letter of Atty. Ronquillo within a period of ten (10) days from receipt thereo.

On November 18, 2013, Valderoso filed her Answer[5] wherein she contended that sometime in 1994, while she was pregnant with her third child she was scheduled to take the civil service

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[3] *Id.* at 11-12.

[4] *Id.* at 13.

[5] *Id.* at 14-17.

examination on October 16, 1994 at the San Francisco High School, Quezon City. However, she decided to skip the examination as she had just given birth on September 18, 1994. At that time, she was a casual employee of the local government of Antipolo City, detailed as a clerk at the OCC, MTCC, Antipolo City.

According to her, when she returned to work on November 14, 1994, she was summoned by the Human Resources Department of the local government agency concerned. To her surprise, she received her Certificate of Eligibility[6] with a passing rate of 88.38%. Upon investigation, she discovered that it was a certain Elsie P. Matignas (Matignas) who facilitated her civil service eligibility. Matignas, however, refused to divulge the true identity of the person who took the test in her stead.

On September 9, 1997, Valderoso was appointed as Cash Clerk II in this Court until her resignation on June 6, 2013. She averred that during her employment in this Court, she had never been subjected to any administrative or disciplinary action. As such, she prayed that the whole monetary equivalent of her remaining leave credits be given to her so she can pay for her loan obligation with the Supreme Court Loans Association as well as to finance her plan to work abroad.

After evaluation, the OCA issued Memorandum[7] dated March 23, 2015 wherein it recommended the re-docketing of the matter as a regular administrative case and that Valderoso be found guilty of serious misconduct and dishonesty. Moreover, in view of her resignation on June 6, 2013, the OCA likewise recommended that whatever benefits still due her from the government, except for accrued leave credits, if any, be forfeited and that she be barred from re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

Based from the records of the instant case, this Court finds the recommendation of the OCA proper under the circumstances.

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[6] *Id.* at 8.

[7] *Id.* at 23-28.

As correctly observed by the OCA, Valderoso herself acknowledged, in her Answer, that another person took the examination in her behalf. This court, however, finds no merit to her defense that the same was done without her knowledge and that it was Matignas who perpetrated the unauthorized substitution.

In *Donato, Jr. v. Civil Service Commission,*[8] this Court approved the findings of the CSC and ruled that:

"In the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons – **(CSC Resolution No. 94-6582)**. Further, by engaging or colluding with another person to take the test in his behalf and thereafter by claiming the resultant passing rate as his, clinches the case against him. In cases of impersonation, the Commission has consistently rejected claims of good faith, for *"it is contrary to human nature that a person will do (impersonation) without the consent of the person being impersonated.* (**CSC [R]esolution No. 94-0826**)"[9]

In the present case, aside from the self-serving claim of Valderoso that it was Matignas who facilitated the alleged impersonation of her civil service examination, records do not show any measure taken up by her to correct the same. No amount of good faith can be attributed to Valderoso. Good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted her to undertake an inquiry.[10] Moreover, since Matignas already passed away, it seems to this Court that it is too convenient for Valderoso to pin the blame to a person who is no longer around to defend herself.

Valderoso's action constitutes dishonesty. It is "a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue and integrity.

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[8] 543 Phil. 731 (2007).

[9] *Id.* at 744.

[10] *Faelnar v. Palabrica,* 596 Phil. 417, 429 (2009).

It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary."[11]

Under Section 46A(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, serious dishonesty is considered a grave offense punishable by dismissal from the service. Records, however, show that respondent Valderoso has already resigned from her position effective on June 6, 2013. Nonetheless, resignation should not be used either as an escape or as an easy way out to evade an administrative liability or an administrative sanction.

Valderoso's resignation, however, would affect the penalty imposable against her. The penalty of dismissal arising from the offense was rendered moot by virtue of her resignation. Thus, this Court find the recommendation of the OCA to be appropriate under the circumstances and impose upon Valderoso the penalty of forfeiture of all benefits due her, except accrued leave credits and her disqualification from any future government service.

As a final note, this Court emphasizes that "[a]ssumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring for public office must observe honesty, candor, and faithful compliance with the law. Nothing less is expected.[12]

WHEREFORE, respondent Elena T. Valderoso is hereby found **GUILTY of SERIOUS DISHONESTY**. In lieu of **DISMISSAL**, the penalty which her offense carry, but which can no longer be effectively imposed because of her resignation, Elena T. Valderoso is hereby meted the penalty of **FORFEITURE** of whatever benefits still due her from the government, except accrued leave credits if she has earned any; and is likewise

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[11] *OCA v. Bermejo,* 572 Phil. 6, 14 (2008).

[12] *Re: Administrative Case for Dishonesty and Falsification of Official Document: Benjamin R. Katly,* A.M. No. 2003-9-SC, March 25, 2004, 426 SCRA 236, 242.

declared **DISQUALIFIED** from employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes,Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Brion, J., on leave.

Caguioa, J., on official leave.

EN BANC

[G.R. No. 184288. February 16, 2016]

ERIC N. ESTRELLADO and JOSSIE M. BORJA, *petitioners, vs.* **KARINA CONSTANTINO DAVID, THE CIVIL SERVICE COMMISSION, HIPOLITO R. GABORNI and ROBERTO S. SE,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; RECRUITMENT, SELECTION AND PROMOTION OF EMPLOYEES; THE SCREENING PROCESS IS THAT WHICH EACH DEPARTMENT OR AGENCY FORMULATES AND ADMINISTERS IN ACCORDANCE WITH THE LAW, RULES, REGULATIONS AND STANDARDS SET BY THE CIVIL SERVICE COMMISSION (CSC).—** CSC Memorandum Circular (MC) No. 3, (Revised Policies on Merit Promotion Plan) Series of 2001 shows that screening requires no interviews and examinations. x x x [It] should be read in conjunction with the relevant provisions in Executive Order 292 (*Revised*

Administrative Code of 1987) on the CSC, [re:] CHAPTER 5 – Personnel Policies and Standards **SEC. 21. Recruitment and Selection of Employees** [and] **SEC. 32. Merit Promotion Plans.** It is definite [therefrom] that the screening process is that which each department or agency formulates and administers in accordance with the law, rules, regulations, and standards set by the CSC. If neither the law nor the implementing rules and regulations define in specific terms or criteria the particulars of the screening process, then each agency or department is empowered to formulate its own screening processes subject to the standards and guidelines set by the CSC. The CA thus correctly concluded that the appointing authority exercised the right of choice, freely exercising its best judgment, in determining the best-qualified applicants from those who had the necessary qualifications and eligibilities.

2. **ID.; ID.; ID.; THREE-SALARY GRADE LIMITATION FOR PROMOTION; EXCEPTIONS; CANDIDATE'S SUPERIOR QUALIFICATIONS.—** [T]he Court sustains the CA's holding that the CSC did not transgress the [three-salary grade] limitation in relation to Se's promotion from Engineer II (SG 16) to Administrative Officer IV (SG22), which was six steps upwards. The limitation was unquestionably subject to exceptions. The promotion of Se was made under the fifth exception stated in CSC Resolution No. 03-0106 dated January 24, 2003, to wit: x x x 5. The candidates passed through a deep selection process, taking into consideration the candidates' superior qualifications in regard to: Educational achievements, Highly specialized trainings, Relevant work experience, Consistent high performance rating/ranking x x x Based on the CSC's instructive reasoning, the fifth exception definitely applied to Se. x x x Se's superior qualifications, as compared to those of Borja, were the basis for his appointment. In this connection, the CSC fittingly stressed that "the three-salary grade limitation should not be the sole basis for the disapproval of an appointment but should be taken as an indicator of possible abuse of discretion in the appointment process." A relevant inquiry into the qualifications of Borja and Se has convinced us to hold that Se's appointment should be upheld because he was better qualified than Borja despite the fact that he was not the next in rank or that his promotion would require moving him to six-salary grades higher.

3. **REMEDIAL LAW; APPEALS; FACTUAL ISSUES RAISED FOR THE FIRST TIME ON APPEAL, NOT PROPER.—** [T]he lapse of the publication, being raised for the first time on appeal, could not be properly dealt with and resolved in this appeal. x x x For the Court to now consider the effect of the lapse of the publication for the first time in this appeal would violate the basic principle of *appellate* adjudication, that only the issues raised and dealt with by the lower courts or tribunals or offices, as to which the parties and said lower courts or tribunals or offices were given the fullest opportunity and time to ventilate their respective sides, should be considered and decided. Moreover, the matter involves a question of fact, which the Court, not being a trier of facts, cannot concern itself in this appeal. x x x Lastly, deciding such new issue would necessarily deprive the parties of the fullest ventilation of their cases in respect of each other in the lower courts or in the administrative levels.

APPEARANCES OF COUNSEL

Solosa and De Guzman Law Offices for petitioners.
The Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

The next-in-rank status of a government employee is not a guarantee to one's fitness to the position aspired for, and the applicant must go through the rigors of a screening and selection process as determined and conducted by a department or agency, subject only to the standards and guidelines set by the Civil Service Commission (CSC). This is in keeping with the ideal of promoting through merit rather than entitlement, and thus ensuring that government service is rewarded with the best fit.

Under review is the decision promulgated on August 26, 2008,[1] whereby the Court of Appeals (CA) affirmed CSC Resolution

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[1] *Rollo*, pp. 40-52; penned by Associate Justice Fernanda Lampas-Peralta, with the concurrence of Associate Justice Edgardo P. Cruz (retired) and Associate Justice Normandie B. Pizarro.

No. 06-0252 dated February 10, 2006[2] and CSC Resolution No. 06-0835 dated May 9, 2006,[3] both issued by the CSC, thereby upholding the promotional appointments of respondents Hipolito R. Gaborni and Roberto S. Se.

Antecedents

The factual and procedural antecedents are narrated in the CA's assailed decision, as follows:

> After screening the applicants on January 15, 2004, the LTO-CO-SPB recommended to the LTO the appointment of Hipoilto R. Garboni and Roberto S. Se to the vacant positions of TRO II and AO IV within the LTO Law Enforcement Service.
>
> Thereafter, petitioners Eric N. Estrellado, TRO 1, and Jossie M. Borja, Records Officer III, who were also applicants for the aforementioned positions and in their alleged capacities as next-in-rank employees, filed with the CSC-NCR a petition to declare the LTO-CO-SPB selection procedure null and void. They alleged, among others, that Hipolito R. Garboni and Roberto S. Se did not meet the requirements for the positions of TRO II and AO IV.
>
> On April 21, 2004, the CSC-NCR referred the petition to the LTO Grievance Committee, which did 'not find merit in complainants' grievances' and dismissed the petition in a Resolution dated August 12, 2004. Petitioners appealed said Resolution to the LTO Assistant Secretary who, in an Order dated September 27, 2004, dismissed the appeal and directed the LTO Grievance Committee to issue the Certificate of Final Action on Grievance (CFAG), which the latter consequently issued on October 4, 2004.
>
> On October 1, 2004, the LTO Assistant Secretary appointed Hipolito R. Garboni as TRO II and on October 25, 2004, Roberto S. Se, as AO IV.
>
> On October 28, 2004, petitioners re-filed with the CSC-NCR their petition to declare the selection procedure of the LTO-CO-SPB null and void and to recall the approval of the appointments of Hipolito R. Garboni and Roberto S. Se. In a Decision dated December 28, 2004, the CSC-NCR dismissed the petition for lack of merit.

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[2] CA *rollo,* pp. 31-40.

[3] *Id.* at 25-30.

Subsequently, petitioners filed a motion for reconsideration, which the CSC-NCR denied in a Decision dated May 5, 2005.

Hence, petitioners filed an appeal before the CSC, but the latter dismissed the same in its Resolution No. 060252 dated February 10, 2006 as follows:

> **WHEREFORE**, the appeal of Eric N. Estrellado, Transportation Regulation Officer I, and Jossie M. Borja, Records Officer III, Land Transportation Office (LTO), is hereby **DISMISSED**. Accordingly, the Decision dated May 5, 2005 of the Civil Service Commission-National Capital Region (CSC-NCR), Banawe, Quezon City, dismissing their petition to declare null and void the selection procedure conducted by the LTO-Central Office-Selection and Promotion Board (LTO-CO-SPB) and to recall the approval of the appointments of Hipolito R. Gaborni as Transportation Regulation Officer (TRO) II and Roberto S. Se as Administrative Officer (AO) IV, **STANDS**.

Petitioners filed a motion for reconsideration, but the CSC denied the same in its Resolution No. 060835 dated May 9, 2006. Thus:

> **WHEREFORE**, the motion for reconsideration of Eric N. Estrellado, Transportation Regulation Officer I, and Jossie M. Borja, Records Officer III, Land Transportation Office (LTO) is hereby **DENIED**. Accordingly, CSC Resolution No. 06-0252 dated February 10, 2006 dismissing their appeal from the Decision dated May 5, 2005 of the Civil Service Commission National Capital Region (CSC-NCR), Banawe, Quezon City, and affirming the approval of the appointments of Hipolito R. Garborni as Transportation Regulation Officer (TRO) II and Roberto S. Se, as Administrative Officer (AO) IV, **STANDS**.
>
> Let a copy of this Resolution be furnished the Civil Service Commission National Capital Region.[4]

Still aggrieved, the petitioners appealed to the CA by petition for review, asserting that the CSC had erred in sustaining the validity of the selection procedure undertaken by the Land Transportation Office's Promotion and Selection Board (LTO-PSB) resulting in the validation of the appointments of Hipolito

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[4] *Rollo,* pp. 41-43.

R. Gaborni and Roberto S. Se as Transportation Regulation Officer II (TROII) and Administrative Officer IV (AOIV), respectively.[5]

In its assailed decision,[6] the CA ruled that petitioners' bare claim of nullity of the selection procedure did not overcome the specific factual findings of the CSC to the effect that Gaborni and Se had undergone screening on January 15, 2004 prior to their appointments, and that Garboni and Se had met the qualifications; that the LTO-PSB had conducted interviews, with the Human Resource Management (HRM) Assistant/Secretariat even presenting a study on the Comparative Assessment of Candidates for Promotion; and that the results showed that Gaborni had ranked second for the TRO II position and Se, first for the AO IV position.

The CA opined that the CSC did not violate the rule on the three-salary grade promotion because Se's promotion from Engineer II (SG 16) to AO IV (SG22), or six steps upwards, came under one of the exceptions specified in CSC Resolution No. 03-0106 dated January 24, 2003; that the LTO-PSB, noting the CSC's findings, conducted a deep selection process that showed Se's superior qualifications compared to those of the other applicants for the same position;[7] that a change in the LTO-PSB's composition required mere reporting to the CSC Regional Office, conformably with CSC MC No. 4, Series of 2005, to the effect that no approval of the change was necessary;[8] that the recall of the appointments of Gaborni and Se on the basis of the absence of the Merit Promotion Plan (MPP) would be improper in light of the findings showing that the appointments were sufficient as per the approved MPP of the LTO in 1990;[9] and that the petitioners should not be allowed to raise the lapsed

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[5] *Id*. at 44.

[6] *Supra* note 1.

[7] *Id*. at 47-48.

[8] *Id*. at 49.

[9] *Id*. at 49-50.

publication for the vacant positions for the first time on appeal considering that such factual matter had not been raised at the administrative level or before the CSC-NCR or the CSC.

Issues

Undaunted, the petitioners maintain that the appointments of Se and Gaborni violated pertinent laws, including Republic Act No. 7041 (*An Act Requiring Regular Publication*). They listed the following errors of the CA, to wit:

I

WITH UTMOST DUE RESPECT, THE HONORABLE CA MISAPPRECIATED THE FACT OF COMPARATIVE ASSESSMENT OF CANDIDATES FOR PROMOTION AS PROOF OF SCREENING WHEN IT IS NOT. THUS, IT ERRED AND COMMITTED SERIOUS ERRORS IN JUDGMENT IN HOLDING THAT A SCREENING OF CONTENDING APPLICANTS WAS CONDUCTED, WHEN IN TRUTH AND IN FACT SCREENING PRE-SUPPOSES CONDUCT OF EXAMINATION AND INTERVIEW OF APPLICANTS SERIOUSLY WANTING IN THE PRESENT CASE AS HELD BY THE CSC ITSELF AS A POLICY (sic)

II

CA SERIOUSLY ERRED AND COMMITTED GRAVE MISTAKE IN LAW WHEN IT HELD THAT THE APPOINTMENTS OF SE AND GABORNI DID NOT VIOLATE THE RULE ON THE COMPOSITION OF PSB AND THE RULE ON MPP-SRP, WHICH WAS CONTRARY TO THE EVIDENCE EXTANT IN THE RECORDS OF THE CASE;

III.

CA SERIOUSLY ERRED AND COMMITTED GRIEVOUS MISTAKE WHEN IT FAILED TO CONSIDER THAT THE APPOINTMENTS WERE MADE ONE-YEAR AFTER ITS PUBLICATION. CSC AS A POLICY DECLARED THAT AFTER THE LAPSED (sic) OF NINE-MONTH PERIOD, PUBLICATION MADE FOR PURPOSES OF FILLING-UP POSITIONS IN GOVERNMENT IS CONSIDERED LAPSED AND INEFFECTIVE. IT ERRED FURTHER WHEN IT RULED THAT IT CANNOT PASSED (sic) UPON JUDGEMENT ON THIS ISSUE WHERE ACCORDING TO THE CA THIS FACTUAL ISSUE WAS NOT

RAISED IN THE PROCEEDINGS BEFORE THE CSC. THE CA MAY ENTERTAIN FACTUAL FINDINGS AS IT MAY REVIEW QUESTIONS OF FACT.[10]

Ruling of the Court

The appeal lacks merit.

I

The petitioners aver that the comparative assessment conducted by the LTO-CO-PSB was not the same as screening, insisting that the comparative assessment based on paper qualifications was only for purposes of preliminary ranking; and that the LTO-CO-SPB only made preparations prior to the required examination and interview of the applicants,[11] which was evident in CSC Memorandum Circular (MC) No. 3, Series of 2001.[12]

A reading of CSC MC No. 3, Series of 2001, shows that screening requires no interviews and examinations. It is notable that the words *screening* and *screened* appear therein six times, to wit:

> The first level representative shall participate during the screening of candidates for vacancies in the first level; the second level representative shall participate in the screening of candidates for vacancies in the second level. Both rank-and-file representatives shall serve for a period of two (2) years. For continuity of operation, the agency accredited employee association may designate an alternate.
>
> x x x x x x x x x
>
> 8. All candidates for appointment to first and second level position shall be screened by the PSB. Candidates for appointment to third level positions shall be screened by the PSB for third level positions composed of at least three (3) career executive service officials as may be constituted in the agency.

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[10] *Id*. at 15-16.

[11] *Id*. at 46-48.

[12] Revised Policies on Merit Promotion Plan dated January 26, 2001 signed by Corazon Alma G. De Leon, Chairman.

Appointment to the following positions shall no longer be screened by the PSB:

a. Substitute appointment due to their short duration and emergency nature. However, should the position be filled by regular appointment, candidates for the position should be screened and passed upon by the PSB; (underlining supplied)

The foregoing provision in CSC MC No. 3, Series of 2001, should be read in conjunction with the relevant provisions in Executive Order 292 (*Revised Administrative Code of 1987*)[13] on the CSC, to wit:

CHAPTER 5 – Personnel Policies and Standards

SEC. 21. Recruitment and Selection of Employees. –

x x x x x x x x x

(4) For purposes of this Section, each department or agency shall evolve its own screening process, which may include tests of fitness, in accordance with standards and guidelines set by the Commission. Promotion boards shall be formed to formulate criteria for evaluation, conduct tests or interviews, and make systematic assessment of training experience.

x x x x x x x x x

SEC. 32. Merit Promotion Plans. — Each department or agency shall establish merit promotion plans which shall be administered in accordance with the provisions of the Civil Service law and the rules, regulations and standards to be promulgated by the Commission. Such plans shall include provisions for a definite screening process, which may include tests of fitness, in accordance with standards and guidelines set by the Commission. Promotion Boards may be organized subject to criteria drawn by the Commission. (Underscoring supplied)

It is definite from the foregoing that the screening process is that which each department or agency formulates and administers in accordance with the law, rules, regulations, and standards

[13] Book V, Title I – Constitutional Commission, Subtitle A – Civil Service Commission, *The Administrative Code of 1987*.

set by the CSC. If neither the law nor the implementing rules and regulations define in specific terms or criteria the particulars of the screening process, then each agency or department is empowered to formulate its own screening processes subject to the standards and guidelines set by the CSC. The CA thus correctly concluded that the appointing authority exercised the right of choice, freely exercising its best judgment, in determining the best-qualified applicants from those who had the necessary qualifications and eligibilities.

Yet, the petitioners, to bolster their argument that the screening process involved interview and examination, cite CSC Resolution No. 04-0835,[14] and contend that the CSC declared therein the need for the interview and written examination as a matter of policy instruction.[15] We cannot sustain the contention. A perusal shows that CSC Resolution No. 04-0835 pertained to the violation of the three-salary grade rule, not to the screening done during the selection process. Moreover, the disapproval of the appointments involved herein was solely due to the exclusion from the selection process of the petitioners despite their being the next in rank. In other words, the petitioners' reliance on CSC Resolution No. 04-0835 was misplaced because it did not in any way support their claim that screening necessarily included interview and examination. Indeed, screening should be viewed as the procedure by which the Personnel Selection Boards (PSBs) undertake to determine the merit and qualification of the applicants to be appointed to the positions applied for.

We reiterate that the appointments in question followed the mandate of the law. As observed by the CSC-NCR in resolving the petitioners' Petition to Declare Selection Procedure Null and Void, the LTO's PSB conducted the necessary screening of the applicants. The CSC-NCR thus concluded from the review of the appointments that: "There is no doubt that Mr. Gaborni and Engr. Se meet the qualification standards for

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[14] CA *rollo*, pp. 108-113, (Re: Quijano, Dennis S. and Borbon, Rosita P., Appeal, Disapproved Appointment, dated July 22, 2004).

[15] *Rollo*, pp. 17-18.

appointment to the respective positions."[16] Furthermore, in resolving the petitioners' Motion for Reconsideration, the CSC-NCR opined:

> This Office notes from the Deliberations of the LTO Selection and Promotion Board in its meeting dated January 15, 2004 that Gaborni "*has excellent qualifications being a Bachelor of Laws graduate, (and that he is given) the maximum score on Outstanding Accomplishment and Potential because of his performance as an effective and efficient Hearing Officer*." With respect to Se, the LTO Selection and Promotion Board gives as its reason, that he was "*given a rating of 5% on Outstanding Accomplishment in recognition of his performance, which resulted in the success in the Cabinet Meeting.*[17]

On its part, the CSC declared that the appointments had resulted from a deep selection process that considered the appointees' superior qualities on educational achievements, highly specialised trainings, relevant work experience, and consistent high performance rating/ranking.[18]

II

The petitioners submit that the LTO-PSB composition and the MPP-SRP did not bear the approval of the CSC as required by CSC MC No. 3, Series of 2001, *viz*.:

> SUBJECT: Revised Policies on Merit Promotion Plan
>
> Pursuant to CSC Resolution No. 010114 dated January 10, 2001, the Commission hereby adopts the following revised policies on Merit Promotion Plan. These policies developed and refined in consultation with the different sectors of the government are as follows:
>
> x x x x x x x x x
>
> 21. All government agencies shall submit their Merit Promotion Plan to the Civil Service Commission which shall take effect

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[16] CA *rollo*, p. 105.

[17] *Id*.

[18] *Id*.

immediately upon approval. All subsequent amendments shall take effect immediately upon approval by the Civil Service Commission.

The petitioners argue that CSC MC No. 3, Series of 2001, effectively amended the 1990 and 2000 MPP of the LTO as apparent under its Section 21, *supra*; hence, the LTO had no authority to appoint Gaborni and Se because it did not submit the MPP-SRP, supposedly the basis for the appointments, to the CSC for approval; and that the absence of the provision allowing the use of the 1990-2000 MPP-SRP in lieu of the 2003 required submission for the CSC's approval rendered the challenged appointments invalid.

The arguments lack merit.

To begin with, the 1990 and 2000 MPP/SRP of the LTO remained effective. This effectiveness was pronounced by the CSC-NCR:

> In the absence of a newly approved Merit Promotion Plan and System of Ranking Positions, the Board made use of the MPP and SRP approved by then CSC Chair Patricia A. Sto. Tomas on August 1, 1990 and August 23, 2000, respectively. It can be said that existing MPP and SRP were still effective at the time of deliberation. A review of said MPP shows that the selection was conducted in accordance with the policies set therein.[19]

The CSC-NCR properly applied the 1990 and 2000 MPP-SRP of the LTO despite the subsequent issuance of CSC MC No. 3, Series of 2001. The petitioners cannot successfully assail the application of the previous MPP-SRP on the ground that there was no exception established therein. The last sentence of Section 21, *supra* – *All subsequent amendments shall take effect immediately upon approval by the Civil Service Commission* – reveals the contrary. The phrase *All subsequent amendments* obviously referred to the new MPPs submitted by the departments and agencies to the CSC for its approval. What is plainly envisioned is the situation in which the departments and agencies of the Government that had not submitted and

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[19] CA *rollo*, p. 95.

secured the approval of their new MPPs could still apply their existing MPPs in the interim. To adopt the petitioners' arguments would give rise to a situation in which no appointments could be made in the meantime, thereby creating a vacuum in the government offices that would likely cause a hiatus in the delivery of services to the public.

Accordingly, the CSC-NCR correctly held that CSC MC No. 3, Series of 2001, did not and could not amend the MPP/SRP of the LTO. The provision, reasonably interpreted, should mean that *amendments* pertained to the submitted MPPs. Hence, the CA's following declaration was warranted:

> In this case, records show that on August 1, 1990, then CSC Chairman Patricia A. Sto. Tomas approved the MPP of the LTO. Hence, when the LTO-CO-PSB screened the applicants for the positions of Transportation Regulation Officer II and Administrative Officer IV, the MPP dated August 1, 1990 was used. Therefore, although the LTO had not submitted a new MPP pursuant to CSC Memorandum Circular No. 3, s. 2001, it cannot be said that the LTO has no MPP, as in fact, the 1990 approved MPP was used as basis for the screening and consideration of the qualifications of the contenders for the positions. Hence, lack of MPP cannot be the basis for the recall of the approval of the appointments of Se and Gaborni. Nevertheless, the LTO is enjoined to come up with its new MPP and have it approved by the Commission.[20]

The petitioners also submit that the similar lack of approval by the CSC of the LTO's PSB composition invalidated the questioned appointments; that the CA erred in applying Memorandum Circular No. 4, Series of 2005, which only required reporting of the changes in the PSB's composition contrary to CSC MC No. 3, Series of 2001, which required approval; that considering that CSC MC No. 3, Series of 2001, was prevailing at the time of the appointments, and that there was no such approval, the LTO-PSB could not recommend Gaborni and Se; and that because laws should have prospective application, the reduced requirement of reporting in 2005 did not cure the CSC's lack of approval of the PSB's composition in 2001.

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[20] *Rollo,* p. 50.

The petitioners' submission cannot be upheld. We join the observation of the Office of the Solicitor General (OSG)[21] that the CSC's approval was not required because CSC MC No. 3, Series of 2001, did not demand such approval. CSC MC No. 3, Series of 2001, only provided in item 6(a), (b), (c) and (d) for the PSB's composition without mentioning any requirement for prior approval. Hence, the approval was necessary only for the MPP, as already discussed. Thus, the CSC Central Office, in its Resolution No. 060252,[22] confirmed the required LTO-CO-SPB's composition in accordance with the mandates of item 6 of CSC MC No. 3, Series of 2001. At any rate, the changes in the PSB composition only needed to be reported to the CSC Regional Office or Field Office concerned in accordance with a recent amendment to CSC MC No. 3, Series of 2001.[23] It is immaterial, therefore, whether CSC MC No. No. 4, Series of 2005, was misapplied herein, or whether CSC MC No. 4, Series of 2005, should be prospectively applied. The PSB's recommendation in favor of Gaborni and Se's appointments needed no approval from the CSC, for only the compliance with the required composition as dictated by CSC MC No. 3, Series of 2001, was necessary.

III

The petitioners state that the questioned appointments of Gaborni and Se were illegal or void *ab initio* because they were made in violation of the last paragraph of item 4 of CSC MC No. 3, Series of 2001, which provides:

> The publication of a particular vacant position shall be valid until filled up but not to extend beyond six (6) months reckoned from the date of the vacant position was published.[24]

They assert that the publication lapsed in view of Section 2 and Section 3 of Republic Act No. 7041[25] considering that the

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[21] CA *rollo,* pp. 46-47.

[22] *Id.* at 31-40.

[23] *Rollo*, p. 49.

[24] CA *rollo,* p. 46.

[25] An Act Requiring Regular Publication of Existing Vacant Position in Government Offices, Appropriating Funds Therefore, and for Other Purposes.

published positions remained vacant for nine months from the publication (that is, from January 15, 2004 until October 15, 2004).

We note that the CA rejected this assignment of error for being belatedly raised,[26] observing:

> Anent petitioners' claim that the publication of the vacant positions was made on January 15, 2004, but the vacancies were filled only on October 15, 2004 or more than nine (9) months from said publication, this is a factual matter which petitioners did not raise at any stage of the proceedings before the CSC-NCR or CSC. It is axiomatic that facts or issues not raised at the administrative level cannot be review for the first time by the court. The reason for this is clear:
>
>> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review but determine and decide for the first time a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

The petitioners disagree, positing that they had raised the issue but both the CSC-NCR and the CSC did not deal with and rule on the same. Curiously, however, they are assuming a flexible posture because they alternatively argue that even if they did not seasonably raise the issue, the lapse of the publication still negated the intrinsic validity of the appointments.

We uphold the observation by the CA that the lapse of the publication, being raised for the first time on appeal, could not be properly dealt with and resolved in this appeal. It clearly

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[26] *Supra* note 1, p. 50, the CA citing *Benguet Corporation v. Central Board of Assessment Appeals*, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 584.

appears that the lapse of the publication was not among the issues resolved by the CSC-NCR and the CSC in all their resolutions, and was not also discussed or tackled in the administrative levels. The only issues that the petitioners consistently raised below related only to the three-salary grade limitation rule, the PSB's composition, and the lack of the MPP/SRP on the part of LTO. For the Court to now consider the effect of the lapse of the publication for the first time in this appeal would violate the basic principle of *appellate* adjudication, that only the issues raised and dealt with by the lower courts or tribunals or offices, as to which the parties and said lower courts or tribunals or offices were given the fullest opportunity and time to ventilate their respective sides, should be considered and decided. Moreover, the matter involves a question of fact, which the Court, not being a trier of facts, cannot concern itself in this appeal. Indeed, to deal at all at this stage with anything that the lower courts or tribunals or offices did not consider and pass upon, and reverse or modify them thereon would essentially be unfair. Lastly, deciding such new issue would necessarily deprive the parties of the fullest ventilation of their cases in respect of each other in the lower courts or in the administrative levels.

IV

Although the three-salary grade limitation is not now raised as an issue by the petitioners, it is not amiss to discuss the limitation to explain why the Court sustains the CA's holding that the CSC did not transgress the limitation in relation to Se's promotion from Engineer II (SG 16) to Administrative Officer IV (SG22), which was six steps upwards.

The limitation was unquestionably subject to exceptions. The promotion of Se was made under the fifth exception stated in CSC Resolution No. 03-0106 dated January 24, 2003, to wit:

> Any or all of the following would constitute as a meritorious case, excepted from the 3-salary grade limitation on promotion and transfer:
>
> 1. The position occupied by the person is next-in-rank to the vacant position, as identified in Merit Promotion Plan and the System of Ranking Positions (SRP) of the agency;

2. The position is a lone, or entrance position, as indicated in the agency staffing pattern;
3. The position belongs to the dearth category, such as Medical officers/Specialist positions and Attorney positions;
4. The positions is unique and/or highly specialized, such as Actuarial positions and Airways Communicator;
5. The candidates passed through a deep selection process, taking into consideration the candidates' superior qualifications in regard to:
   - Educational achievements
   - Highly specialized trainings
   - Relevant work experience
   - Consistent high performance rating/ranking
6. The vacant position belongs to the closed career system.

In connection with the foregoing, the CSC Regional Director concerned will be the one who will approve and grant any exception in accordance with the above guidelines. (underlining supplied)

After the LTO-CO-SPB considered Se's appointment to fall under the fifth exception, the petitioners challenged the promotion, but the CSC-NCR affirmed the promotion by opining that "the aforementioned rule should not be interpreted in its strict sense and the circumstances on the appointment of Se would fit in the term very 'meritorious cases'."[27] In respect of Borja, the CSC-NCR declared that: "It cannot be denied that (Se) has completed the academic requirements in Master's in Business Administration (MBA), which was rated 13% as against 10% for Ms. Borja not to mention that he was rated a maximum of 5% under Outstanding Accomplishment while there was none for Ms. Borja."[28]

In denying the petitioners' motion for reconsideration, the CSC-NCR took note of the LTO-SPB's deliberations of January 15, 2004, and ruled as follows:

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[27] CA *rollo,* p. 96.

[28] *Id*.

x x x **With respect to Se, the LTO Selection and Promotion Board gives as its reason, that he was "given a rating of 5% on Outstanding Accomplishment in recognition of his performance**, which resulted in the success in the Cabinet Meeting." Thus, LTO has given basis for the promotion of appointees Gaborni and Se, which reasons fall under those circumstances that the Commission considers as 'meritorious cases.'[29] (bold underscoring for emphasis)

On review, the CSC, affirming the promotional appointment of Se, elaborated on the application of the limitation and its exceptions, ultimately denying the motion for reconsideration of the petitioners, to wit:

The Commission has emphasized in a string of cases **that the three (3) salary grade limitation on promotion should not be the sole basis for the disapproval of an appointment but should be taken as an indicator of possible abuse of discretion in the appointment process.** In such cases, the Commission will make a thorough and deeper evaluation relative to the manner and merit of the issuance of the appointment vis-à-vis the reasons or justifications advanced by the appointing authority. If the issuance of the appointment falls under any of the meritorious cases or based on meritorious consideration, then the appointment should be approved.

In this case, the Commission is convinced that Se's appointment falls under the fifth (5th) exception of CSC Resolution No. 03-0106. As culled from the records, the agency's Personnel Selection Board (PSB) conducted a deep selection process of the qualifications of the applicants, showing that Se had superior qualifications than the other applicants.[30] (bold underscoring for emphasis)

Based on the CSC's instructive reasoning, the fifth exception definitely applied to Se. It is noteworthy that Borja did not dispute the findings on Se's more meritorious qualifications, focusing only on the three-salary grade limitation rule and on her being the next-in-rank. As to the next-in-rank contention of Borja, it even appears that neither Borja nor Se was the next-in-rank in the context of the approved Occupational Grouping and Ranking

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[29] *Id.* at 105.

[30] *Rollo*, p. 48.

of Positions.[31] Hence, Se's superior qualifications, as compared to those of Borja, were the basis for his appointment.

In this connection, the CSC fittingly stressed that "the three-salary grade limitation should not be the sole basis for the disapproval of an appointment but should be taken as an indicator of possible abuse of discretion in the appointment process." A relevant inquiry into the qualifications of Borja and Se has convinced us to hold that Se's appointment should be upheld because he was better qualified than Borja despite the fact that he was not the next in rank or that his promotion would require moving him to six-salary grades higher.

In fine, the CA validated Se's selection by observing that the LTO had conducted a deep selection process.[32] The petitioners did not refute the conduct of the deep selection process, claiming only that the comparative assessment was not the screening contemplated by CSC MC No. 3, Series of 2001. This presupposes that the LTO established the bases for choosing Se instead of Borja. The CSC approved the exception in favor of Se. Under the circumstances, the allegation of abuse of discretion, least of all grave, as attendant in the appointment of Se remained unsubstantiated.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 26, 2008; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Peralta, J., no part.

Brion, J., on leave.

Caguioa, J., on official leave.

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[31] CA *rollo,* p. 93.

[32] *Rollo*, at 48.

SECOND DIVISION

[A.C. No. 8037. February 17, 2016]

RE: DECISION DATED AUGUST 19, 2008, 3RD DIVISION, COURT OF APPEALS IN CA-G.R. SP NO. 79904 [HON. DIONISIO DONATO T. GARCIANO, *ET AL.* *V.* HON. PATERNO G. TIAMSON, *ETC.*, *ET AL.*], *petitioner, vs.* **ATTY. JOSE DE G. FERRER,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; COMMITTED WHERE MULTIPLE CASES BASED ON THE SAME ACTION AND WITH THE SAME PRAYER WERE FILED.—** On June 24, 2003, the Regional Trial Court ordered [Mayor] Garciano, *et al*. to release the funds and pay [Sangguniang Bayan Secretary] Vallestero's salaries and other benefits. Garciano, *et al.* did not heed the Regional Trial Court's order; hence they were found liable for indirect contempt. Appealing the trial court's ruling, Garciano, *et al.*, through their counsel, Atty. Ferrer, filed a Petition for *Certiorari* (First Petition) on October 9, 2003 before the Court of Appeals. This was raffled to the Eleventh Division and was docketed as CA-G.R. SP No. 79752. On October 16, 2003, Garciano, *et al*., through Atty. Ferrer, filed another Petition for *Certiorari* with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (Second Petition) before the Court of Appeals. This was raffled to the Third Division and was docketed as CA-G.R. SP No. 79904. On the same day, Garciano, *et al.* filed before the Court of Appeals Eleventh Division an Urgent Ex-Parte Motion to Withdraw Petition Under Rule 17 Section 1 of the Revised Rules of Court. They allegedly moved to withdraw the First Petition to avail themselves of other remedies, especially since a comment had not yet been filed. x x x Respondent filed multiple cases based on the same cause of action and with the same prayer. All the elements necessary for the commission of forum shopping are present.

2. **LEGAL ETHICS; LAWYERS; VIOLATION OF THE RULE ON FORUM SHOPPING WARRANTS SIX (6) MONTHS**

SUSPENSION FROM LEGAL PRACTICE.— [T]he incompetence of counsel in not knowing any better justifies the imposition of administrative liability. Respondent himself admitted that he was responsible for the withdrawal of the pending First Petition and the filing of the Second Petition, in the belief that it was in the best interest of his clients. This court cannot tolerate respondent's inability to realize that his actions would amount to forum shopping. Respondent had full knowledge that when he filed the Second Petition, it concerned the same parties and same cause of action. x x x **WHEREFORE,** respondent is **SUSPENDED** from the practice of law for six (6) months for engaging in forum shopping. He is **STERNLY WARNED** that a repetition of the same and similar acts will be dealt with more severely.

R E S O L U T I O N

LEONEN, *J.*:

This administrative complaint[1] originated from the Court of Appeals Decision[2] dated August 19, 2008, which summarily dismissed the Petition for Certiorari with prejudice and found petitioners[3] in CA-G.R. SP No. 79904, as well as their counsel, Atty. Jose De G. Ferrer (Atty. Ferrer), guilty of direct contempt of court.[4] They were further imposed a fine of ₱2,000.00.[5] The Court of Appeals then ordered that a copy of its Decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Ferrer, respondent in the present case.[6]

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[1] *Rollo,* p. 22, Supreme Court Resolution dated November 19, 2008.

[2] *Id*. at 4-20. The Decision was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Martin S. Villarama, Jr. (now retired Associate Justice of this court) and Arturo G. Tayag of the Third Division.

[3] Hon. Dionisio Donato T. Garciano, Corazon F. Endozo, Almario N. Matawaran, and Joan P. Ferrera.

[4] *Rollo,* p. 19.

[5] *Id*.

[6] *Id*. at 20.

On July 27, 2001, Dionisio Donato T. Garciano (Garciano), then Mayor of Baras, Rizal, sought to appoint Rolando Pilapil Lacayan (Lacayan) as Sangguniang Bayan Secretary, replacing Nolasco Vallestero (Vallestero).[7] The appointment was opposed by Wilfredo Robles (Robles), then Vice Mayor of Baras, Rizal. He said that the position is not vacant and that it is the vice mayor, not the mayor, who has the authority[8] to appoint the Sangguniang Bayan Secretary.

Garciano insisted and removed Vallestero's name from the payroll.[9] Vallestero sued Garciano before the Sandiganbayan.[10] Vallestero, Robles, and other Sangguniang Bayan members also filed a "complaint for mandamus and damages with preliminary mandatory injunction"[11] against Garciano and other municipal officials[12] (Garciano, et al.) before the Regional Trial Court of Morong, Rizal. They sought for the payment of theirr respective salaries.[13]

On June 24, 2003, the Regional Trial Court[14] ordered Garciano, et al. to release the funds and pay Vallestero's salaries and other benefits.[15] Garciano, et al. did not heed the Regional Trial

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[7] *Id*. at 5-6.

[8] *Id*. at 5. This was allegedly pursuant to Section 444 of the Local Government Code (*Id*.), as well as DILG Opinion No. 08-95 dated February 2, 1995 *vis-a-vis* the Civil Service Commission Resolution No. 92-1111 dated August 20, 1992 (*Id*. at 6).

[9] *Id*. at 6.

[10] *Id*. at 7. The case was docketed as SB Case No. 27195.

[11] *Id*.

[12] The municipal officials were Municipal Treasurer Corazon Endozo, Municipal Budget Officer Almario Matawaran, and Municipal Accountant Joan Ferrera.

[13] *Rollo,* p. 7.

[14] *Id*. at 9. The Decision was penned by Acting Presiding Judge Paterno G. Tiamson of Branch 80 of the Regional Trial Court (*Id.* at 4).

[15] *Id*. at 10.

Court's order;[16] hence, they were found liable for indirect contempt.[17]

Appealing the trial court's ruling, Garciano, et al., through their counsel, Atty. Ferrer, filed a Petition for Certiorari (First Petition) on October 9, 2003 before the Court of Appeals.[18] This was raffled to the Eleventh Division[19] and was docketed as CA-G.R. SP No. 79752.[20]

On October 16, 2003, Garciano, et al., through Atty. Ferrer, filed another Petition for Certiorari with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order[21] (Second Petition) before the Court of Appeals. This was raffled to the Third Division[22] and was docketed as CA-GR. SP No. 79904.[23]

On the same day, Garciano, et al. filed before the Court of Appeals Eleventh Division an Urgent Ex-Parte Motion to Withdraw Petition Under Rule 17 Section 1[24] of the Revised

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[16] *Id*.

[17] *Id*. at 12. The Regional Trial Court ordered Garciano, *et al.'s* incarceration for a period not exceeding six (6) months until Vallestero's salaries and benefits, as well as a fine of ₱30,000.00, were paid.

[18] *Id*. at 54-79.

[19] *Id*. at 14.

[20] *Id*. at 54.

[21] *Id*. at 80-105.

[22] *Id*. at 4.

[23] *Id*. at 80.

[24] RULES OF COURT, Rule 17, Sec. 1 provides:

Section 1. Dismissal upon notice by plaintiff. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

Rules of Court.[25] They allegedly moved to withdraw the First Petition to avail themselves of other remedies, especially since a comment had not yet been filed.[26]

On October 17, 2003, the Court of Appeals Third Division[27] issued a temporary restraining order, effective for 60 days and conditioned upon the posting of a bond amounting to ₱100,000.00.[28]

Meanwhile, in its Resolution dated October 24, 2003, the Court of Appeals Eleventh Division granted Garciano, et al.'s Motion to withdraw the First Petition.[29]

In their Reply to the Comment on the Second Petition, Garciano, et al. admitted filing the First Petition docketed as CA-G.R. SP No. 79752, which was similar to the Second Petition.[30] However, they maintained that the withdrawal of the First Petition was made in good faith and in order to correct the technical defect of the First Petition, which was solely verified by Garciano.[31]

Garciano, et al. insisted that they did not commit perjury when they stated in the verification of their Second Petition that there was no pending petition filed involving the assailed Decision of the Regional Trial Court.[32] Garciano, et al. also argued that when they withdrew the First Petition, there was no adverse opinion yet issued by the Eleventh Division.[33] Finally, they claimed that the divisions of the Court of Appeals are not different courts in relation to the other divisions, and both divisions

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[25] *Rollo,* pp. 52-53.

[26] *Id*. at 14.

[27] *Id*. at 147, Integrated Bar of the Philippines Report and Recommendation.

[28] *Id*. at 13.

[29] *Id*. at 14.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 15.

where the Petitions were filed are part and parcel of one court.[34] Hence, there was no forum shopping.

In the Decision dated August 19, 2008, the Court of Appeals Third Division dismissed the Second Petition with prejudice due to the deliberate violation of the rule against forum shopping.[35] The Court of Appeals found that Garciano, et al., through Atty. Ferrer, filed two (2) Petitions for Certiorari successively.[36] It also held that the withdrawal of the First Petition was "intended to camouflage the glaring and blatant irregularity committed"[37] by Garciano, et al. through their counsel.[38] If the withdrawal was, indeed, impelled by the lack of verification of the other petitioners in the First Petition, then Garciano, et al. should have called the attention of the Eleventh Division instead of filing the Second Petition.[39] The Court of Appeals held that when the Second Petition was filed (and the existence of the First Petition concealed), forum shopping had already been committed.[40]

The Court of Appeals further held that neither the adjudication of cases pending before courts nor the contents of these cases are taken judicial notice by the courts, notwithstanding that both cases may have been tried or are actually pending before the same judge.[41] Rather, it is the party and the counsel's duty to inform the court trying the case of any pendency of a similar case filed before any court.[42] Violation of this rule makes the

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[34] *Id*.

[35] *Id*.

[36] *Id*. at 16.

[37] *Id*.

[38] *Id*. at 16-17.

[39] *Id*. at 17.

[40] *Id*. at 18.

[41] *Id*., citing *T'Boli Agro-Industrial Development, Inc. v. Atty. Sofilapsi,* 442 Phil. 499 (2002) [Per *J.* Mendoza, Second Division].

[42] *Id*.

parties and their counsel guilty of forum shopping.[43] The Court of Appeals reiterated that the rule against forum shopping seeks to avoid the issuance of conflicting decisions by two (2) or more courts upon the same issue.[44]

The Court of Appeals concluded:

> ***WHEREFORE,*** the petition is summarily **Dismissed with prejudice.** Petitioners and Atty. Jose De G. Ferrer are hereby found guilty of direct contempt of court for which a maximum fine of ₱2,000.00 is imposed upon them, payable within 5 days from receipt of this decision.
>
> Let a copy of this decision be furnished to the Integrated Bar of the Philippines for investigation and appropriate disciplinary action against Atty. Jose De G. Ferrer.[45] (Emphasis in the original)

In the Indorsement dated September 1, 2008, Alicia A. Risos-Vidal, Director for Bar Discipline of the Integrated Bar of the Philippines, forwarded the Notice of Judgment of the Court of Appeals in CA-GR S.P. No. 79904 to the Office of the Bar Confidant.[46]

On November 19, 2008, this court resolved to note the Indorsement and treat the Notice of Judgment as an administrative complaint against Atty. Ferrer.[47]

Atty. Ferrer was ordered to comment on the administrative complaint.[48] In his Comment, he states that he acted in good faith in the simultaneous filing of the Second Petition and the urgent ex-parte Motion to withdraw Garciano, et al.'s First Petition.[49] He alleges that he withdrew the First Petition docketed

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[43] *Id*. at 19.

[44] *Id*.

[45] *Id*. at 19-20.

[46] *Id*. at 22.

[47] *Id*.

[48] *Id*.

[49] *Id*. at 33.

as CA-G.R. SP No. 79752 on October 16, 2003, the same day he filed the Second Petition docketed as CA-G.R. S.P No. 79904.[50]

Atty. Ferrer states that there was an urgent need to file the Second Petition as the First Petition was verified by only one petitioner instead of four.[51] He also claims that the technical defect may have hampered the immediate issuance of a temporary restraining order.[52] Thus, he deems that it was "more realistic and expedient" to file the Second Petition and simultaneously withdraw the First Petition rather than amend the First Petition.[53] He states that amending the First Petition would have required a hearing before it could be admitted as basis for the issuance of a temporary restraining order.[54]

Atty. Ferrer adds that by filing the Motion to withdraw the First Petition on the same day as the filing of the Second Petition, he substantially complied with the rule against forum shopping.[55] He asserts that he was acting in the best interest of his clients, whose "liberty [were] then at stake and time was of the essence."[56] As the withdrawal of the First Petition and the filing of the Second Petition were made simultaneously and not one day after another, Atty. Ferrer claims that it was unlikely to have conflicting decisions rendered by different courts on the same issue.[57]

Finally, Atty. Ferrer states that there was no violation of the rule against forum shopping because the First and Second Petitions were not filed before different tribunals, although the Eleventh and Third Divisions of the Court of Appeals are technically

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[50] *Id*. at 34. Only Dionisio Donato T. Garciano signed the Petition. The others, Corazon F. Endozo, Almario N. Matawaran, and Joan P. Ferrera, were allegedly not immediately available at the time of filing of the Petition.

[51] *Id*.

[52] *Id*.

[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] *Id*. at 48.

[57] *Id*.

separate from each other.[58] He states that forum shopping takes place when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than appeal or certiorari) in another.[59] Atty. Ferrer further asserts that the filing of the case took place before only one forum—the Court of Appeals—and that no forum shopping could be considered to have taken place.[60]

In his Report and Recommendation dated November 17, 2009, Commissioner Salvador B. Hababag (Commissioner Hababag) of the Integrated Bar of the Philippines Commission on Bar Discipline adopted the findings of the Court of Appeals *in toto*.[61] He stated that the Court of Appeals Decision dated August 19, 2008 in CA-G.R. SP No. 79904 is "loud and clear."[62]

Based on the Court of Appeals' findings, Commissioner Hababag concluded that Atty. Ferrer clearly violated the rule on forum shopping.[63] Thus, he recommended that Atty. Ferrer be suspended for three (3) months from the practice of law with a stem warning that any similar infraction in the future would be dealt with more severely.[64]

On February 13, 2013, the Integrated Bar of the Philippines Board of Governors issued Resolution No. XX-2013-132,[65] which resolved to adopt and approve the Report and Recommendation of Commissioner Hababag. It recommended that the penalty of Atty. Ferrer be reprimand with a warning that a repetition of the same act shall be dealt with more severely.[66] The Integrated

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[58] *Id*. at 49.

[59] *Id*.

[60] *Id*.

[61] *Id*. at 143-152.

[62] *Id*. at 151.

[63] *Id*. at 152.

[64] *Id*.

[65] *Id*. at 142.

[66] *Id*.

Bar of the Philippines Commission on Bar Discipline then transmitted the Notice of Resolution to this court through a letter dated October 7, 2013.[67]

The issue for resolution is whether respondent Atty. Jose De G. Ferrer should be held administratively liable for violating the rule against forum shopping.

We affirm the factual findings of the Court of Appeals and the Report and Recommendation of Commissioner Hababag. Respondent is guilty of violating the rule against forum shopping.

Rule 7, Section 5 of the Rules of Court provides the rule against forum shopping:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

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[67] *Id*. at 141.

In *Asia United Bank v. Goodland Company, Inc.,*[68] this court enumerated the instances where forum shopping takes place:

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata).*[69] (Citations omitted)

In *Dy v. Mandy Commodities Co, Inc.,*[70] the court elaborated on the purpose of the rule against forum shopping:

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[71]

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[68] 660 Phil. 504 (2011) [Per *J.* Del Castillo, First Division].

[69] *Id*. at 514.

[70] 611 Phil. 74 (2009) [Per *J.* Mendoza, Third Division].

[71] *Id*. at 84.

Respondent filed multiple cases based on the same cause of action and with the same prayer. All the elements necessary for the commission of forum shopping are present.

The Court of Appeals correctly held that respondent could have easily filed a manifestation that the other petitioners had yet to verify the First Petition. Respondent's reason that the failure of other petitioners to verify the First Petition may imperil the issuance of a temporary restraining order cannot justify the willful violation of the rule against forum shopping.

Respondent must be reminded that the withdrawal of any case, when it has been duly filed and docketed with a court, rests upon the discretion of the court, and not at the behest of litigants.[72] Once a case is filed before a court and the court accepts the case, the case is considered pending and is subject to that court's jurisdiction.

Thus, it was incumbent upon respondent to inform the court or division where he subsequently filed his Second Petition that he had already filed the First Petition. The Court of Appeals correctly held that courts cannot take judicial notice of actions that have been filed either before their courts or before other courts.

This court's Circular No. 28-91 is instructive on this point:

[I]n every petition filed with the Supreme Court or the *Court of Appeals,* the petitioner . . . must certify under oath all of the following facts or undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agencies; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency; (c) if there is such other action or proceeding pending, he must state the status of the same; and (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or *different Divisions thereof,* or any other tribunal

[72] RULES OF COURT, Rule 17, Sec. 2.

or agency, he undertakes to promptly inform the aforesaid courts and such other tribunal or agency of that fact within five (5) days therefrom. (Emphasis supplied).[73]

As a lawyer, respondent is expected to anticipate the possibility of being held liable for forum shopping. He is expected to be aware of actions constituting forum shopping. Respondent's defense of substantial compliance and good faith cannot exonerate him. The elements of forum shopping are expected to be fundamentally understood by members of the bar, and a defense of good faith cannot counter an abject violation of the rule.

In *Alonso v. Relamida, Jr.,*[74] the court elaborated on the liability of counsel who was complicit in violating the rule on forum shopping:

The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or *where a final judgment in one case will amount to res judicata in another.* Thus, the following requisites should concur:

. . . (a) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will,

[73] Supreme Court Rev. Adm. Circ. No. 28-91 (1994), Additional Requisites for Petitions Filed with the Supreme Court to Prevent Forum Shopping or Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.

[74] 640 Phil. 325 (2010) (Per *J.* Peralta, *En Banc*].

regardless of which party is successful, amount to *res judicata* in the action under consideration.

A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the *administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts,* and to maintain only such actions as appear to him to be just and are consistent with truth and honor.[75] (Emphasis supplied, citations omitted)

As we stated in *Alonso,* the incompetence of counsel in not knowing any better justifies the imposition of administrative liability. Respondent himself admitted that he was responsible for the withdrawal of the pending First Petition and the filing of the Second Petition, in the belief that it was in the best interest of his clients. This court cannot tolerate respondent's inability to realize that his actions would amount to forum shopping. Respondent had full knowledge that when he filed the Second Petition, it concerned the same parties and same cause of action.

As for his administrative liability, this court deems it necessary to modify the penalty recommended in Resolution No. XX-2013-132 and impose on respondent the penalty of six (6) months' suspension from legal practice. In *Alonso,* this court suspended the lawyer for six (6) months and warned him not to repeat his infraction.[76]

The Lawyers' Oath that respondent took exhorts him not to "wittingly or willingly promote or sue any groundless, false or

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[75] *Id*. at 334.

[76] *Id*. at 335.

unlawful suit, nor give aid or consent to the same."[77] Moreover, in *Teodoro v. Atty. Gonzales*:[78]

> In engaging in forum shopping, Atty. Gonzales violated Canon 1 of the Code of Professional Responsibility which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice, and the prohibition against unduly delaying a case by misusing court processes.[79]

WHEREFORE, respondent Atty. Jose De G. Ferrer is hereby **SUSPENDED** from the practice of law for six (6) months for engaging in forum shopping, effective upon receipt of this Resolution. He is **STERNLY WARNED** that a repetition of the same and similar acts will be dealt with more severely.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent as a member of the bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

This Resolution shall be immediately executory.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

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[77] *Olivares v. Villalon, Jr.,* 549 Phil. 528, 531 [Per *J.* Corona, First Division].

[78] 702 Phil. 422 (2013) [Per *J.* Brion, Second Division].

[79] *Id.* at 431.

SECOND DIVISION

[A.C. No.10605. February 17, 2016]

BIENVENIDO T. CANLAPAN, *complainant, v.* **ATTY. WILLIAM B. BALAYO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DISPLAY OF IMPROPER ATTITUDE AND ARROGANCE TOWARD AN ELDERLY CONSTITUTE CONDUCT UNBECOMING OF A MEMBER OF THE LEGAL PROFESSION.—** Respondent's display of improper attitude and arrogance toward an elderly constitute conduct unbecoming of a member of the legal profession and cannot be tolerated by this court. Respondent also violated Canon 7 of the Code of Professional Responsibility, which enjoins lawyers to uphold the dignity and integrity of the legal profession at all times. Rule 7.03 provides: A lawyer shall not engage in conduct that adversely reflect on his fitness to practice law, nor shall he, whether in public or private life behave in scandalous manner to the discredit of the legal profession. Furthermore, Rule 8.01 of Canon 8 requires a lawyer to employ respectful and restrained language in keeping with the dignity of the legal profession. Although the remark was allegedly made in response to undue provocation and pestering on the part of complainant, respondent should have exercised restraint. x x x As officers of the court and members of the bar, lawyers are expected to be always above reproach. They cannot indulge in offensive personalities. They should always be temperate, patient, and courteous both in speech and conduct, not only towards the court but also towards adverse parties and witnesses. x x x In this case, we find suspension from the practice of law for one (1) month a reasonable sanction for respondent's misconduct.

2. **ID.; ID.; LAWYERS; ACTIONS AND STATEMENTS THAT WERE MERE HONEST EFFORT TO PROTECT THE INTEREST OF THE CLIENT DO NOT AMOUNT TO OBSTRUCTION OF THE ADMINISTRATION OF JUSTICE.—** Complainant avers that it was immoral and gross misconduct on the part of respondent, who was not a party to

the case, to prevent the due implementation of the Memorandum of Agreement dated June 7, 2014. Complainant further points to the statements of respondent as shown in the Minutes of the Executive Committee Meeting dated June 30, 2014 x x x We find nothing improper in the actions and statements of respondent. What respondent did was a mere honest effort to protect the interest of his client. x x x Hence, if the Memorandum of Agreement causes any undue injury to any party, including the government, the parties to the Agreement can be brought to court on administrative and/or criminal charges. x x x We hold that the foregoing acts do not amount to obstruction of the administration of justice. It is the right of every lawyer, without fear or favor, to give proper advice to those seeking relief. Respondent's assertiveness in espousing with candor his client's cause was merely in accord with his duty to act in the best interests of his client.

R E S O L U T I O N

LEONEN, *J.*:

Before this court is a verified Complaint[1] filed by Bienvenido T. Canlapan, a retired Scout Executive[2] of the Boy Scout of the Philippines — Mayon Albay Council, against Atty. William B. Balayo for violation of Canon 1, Rules 1.01 and 1.03, and Canon 12, Rule 12.04 of the Code of Professional Responsibility:

Rule 1.01. – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

. . . .

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

. . . .

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

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[1] *Rollo,* pp. 1-13.

[2] *Id*. at 2-3. Complainant retired at the age of 70 on November 1, 2013, after serving for 39 years.

Complainant avers that at the mandatory conference held on June 26, 2014 at 10 a.m., before Executive Labor Arbiter Jose C. Del Valle, Jr., in connection with a money claim filed by complainant against the Boy Scouts of the Philippines — Mayon Albay Council[3] (Mayon Council), respondent arrogantly threw his arm toward the complainant while menacingly saying: *"Maski sampulo pang abogado darhon mo, dai mo makua ang gusto mo!"* ("Even if you bring ten lawyers here, you will not get what you want!")[4]

Respondent allegedly made this remark when complainant approached the Mayon Council representatives and told them that complainant, not having been informed beforehand that Ervin O. Fajut (Fajut), Chair of the Mayon Council would bring a lawyer, was placed at a disadvantaged position because he had none.[5]

Complainant was allegedly taken aback and felt humiliated by respondent's actuation, which showed a blatant disrespect for the elderly considering that respondent was much younger.[6] The incident was witnessed by Higino M. Mata (Mata), First Vice Chair of the Mayon Council, who executed an Affidavit,[7] and employees of the National Labor Relations Commission, including the security guard.[8]

Complainant further avers that he expected the conference to be brief as it was called merely for him to confirm[9] the parties' amicable settlement as evidenced by the June 7, 2014 Memorandum Agreement,[10] where the Mayon Council agreed

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[3] *Id*. at 2.

[4] *Id*. at 4.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 17-18.

[8] *Id*. at 4.

[9] *Id*. at 14, Order dated June 16, 2014. The Order was issued by Executive Labor Arbiter Jose C. Del Valle, Jr.

[10] *Id*. at 15-16.

to pay complainant his accrued leave benefits in the total amount of ₱487,000.00 on an installment basis. However, it became adversarial when Fajut reneged on the agreement allegedly due to respondent's influence.[11]

Complainant faults respondent for impeding the enforcement of the signed compromise agreement dated June 7, 2014.[12] This was allegedly in violation of a lawyer's duty to assist in the speedy and efficient administration of justice.[13]

Complainant never imagined that, in his twilight years and in his quest for justice, he would be publicly humiliated by a young lawyer actively participating in the conference, who was neither a party to the labor case nor was authorized by the Mayon Council to appear on its behalf.[14]

In his Comment[15] dated December 1, 2014, respondent avers that he has assisted Fajut in several cases. In addition, Fajut also consulted respondent on the legality of ordinances and resolutions submitted to his office as a member of the Sangguniang Bayan of Malinao, Albay. When Fajut was elected Chair of the Mayon Council, he asked respondent to help him on legal matters concerning his new role.[16]

Upon Fajut's invitation, respondent attended the Executive Meeting of the Mayon Council on June 7, 2014.[17] In that meeting, respondent saw how the Executive Committee was cajoled by Mata, First Vice Chair of the Mayon Council, into agreeing to the Memorandum of Agreement without discussing its legality. The Agreement was presented to the Executive Committee

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[11] *Id*. at 3.

[12] *Id*. at 8.

[13] *Id*. at 10.

[14] *Id*. at 8.

[15] *Id*. at 31-43.

[16] *Id*. at 32.

[17] *Id*. at 33.

prepared and signed by complainant and by Jose Bonto, former acting Chairperson of the Mayon Council.[18]

Respondent avers that after the Executive Meeting, a former employee of the Mayon Council informed Fajut that the Agreement was illegal because its assertion that complainant never availed himself of sick leaves for 39 years was not true.[19]

Thus, on June 10, 2014, Fajut allegedly consulted respondent at his office on the legality of the Memorandum of Agreement dated June 7, 2014. Respondent, being himself a boy scout once, volunteered to render free legal assistance to Fajut.[20] After interviewing Fajut and examining the documents he brought, respondent rendered his written legal opinion[21] dated June 10, 2014.

Respondent further avers that on June 26, 2014, respondent happened to be at the Labor Arbiter's Office to attend to three cases. While there, Fajut approached and asked respondent to make a special appearance for him as it appeared that the Memorandum of Agreement was notarized by Notary Public Enrico Voltaire Rivera despite Fajut's refusal to appear before the notary public. Fajut also said that he had been actively seeking the cancellation of the Agreement.[22]

Respondent avers that the Acknowledgement portion[23] of the Memorandum of Agreement showed that only complainant and the witnesses appeared before the notary public and acknowledged their signatures on the Agreement. There was no mention of Fajut, who was the signatory on behalf of the Mayon Council. Thus, to prevent the perpetration of any fraud against the Mayon Council and/or Fajut, respondent agreed to make a special

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[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 48-50.

[22] *Id*. at 34.

[23] *Id*. at 16.

appearance for the limited purpose of protesting the defective notarization of the Memorandum of Agreement.[24]

During the hearing, complainant allegedly became visibly angry and raised his voice against respondent because of the legal opinion that he wrote. Respondent had no choice but to defend his legal opinion. Nonetheless, he raised as an issue the fact of the improper notarization of the Memorandum of Agreement.[25]

At that point, allegedly to diffuse the tension, the Labor Arbiter asked to talk to the parties individually. While outside the room, complainant pestered respondent and repeatedly exclaimed that it was unfair for Fajut to bring a lawyer while complainant had none.[26]

Respondent avers that he replied in a matter-of-fact tone: *"Maski pira pang abogado ang darahon mo, pareho man sana ang resulta kaiyan"* ("You can bring as many lawyers as you want, the result will be the same").[27]

Respondent further states that he did not flail his hands nor do anything threatening, menacing, defamatory, or disrespectful towards complainant. He did not even raise his voice. Respondent was not arrogant in his dealings with complainant. He only answered back because he was unduly provoked by complainant's persistent and uncalled-for statements against him and his client, Fajut.[28]

Furthermore, to respondent's mind, whether complainant had a lawyer or not, the results would be the same: the Memorandum of Agreement would not be approved by the Labor Arbiter because of the defective notarization. Indeed, the Labor Arbiter required the parties to submit their position papers.[29]

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[24] *Id*. at 34-35.

[25] *Id*. at 35.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 35-36.

[29] *Id*. at 36.

On June 30, 2014, Fajut allegedly requested respondent to attend the Executive Committee meeting of the Mayon Council and to explain the legal opinion that he wrote. During the meeting, respondent allegedly answered questions from the members of the Executive Committee.[30]

Respondent avers that in all of these instances, he waived his fees as he wanted to donate his services to the Boy Scouts. Furthermore, he acted only upon the request of Fajut, and not because of any corrupt motive or interest.[31]

Attached to the Comment is the Supporting Affidavit[32] executed by Fajut on December 1, 2014, corroborating respondent's allegations.

We find respondent guilty of conduct unbecoming of a lawyer and officer of the court for his disrespectful utterances against an elderly. However, we dismiss the other charges imputed against him for lack of merit.

I

Complainant alleges that respondent's act of publicly berating and throwing his arm toward him, a senior citizen, while menacingly saying, "*Maski sampulo pang abogado darahon mo, dai mo makua ang gusto* mo!"[33] is indicative of immoral conduct, disrespect for elders, and a total loss of moral fiber of the person.

Respondent denies that he flailed his hands or did anything menacing, antagonistic, or disrespectful towards complainant. However, he admits that he uttered in a matter-of-fact tone, *"Maski pira pang abogado ang darahon mo, pareho man sana ang resulta kaiyan*,"[34] because of complainant's uncalled-for

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[30] *Id*. at 37.

[31] *Id*.

[32] *Id*. at 44-47.

[33] *Id*. at 6.

[34] *Id*. at 35.

statements against him and Fajut. This was corroborated by Fajut in his Affidavit.

The manner in which the remark was made is inconclusive in view of the conflicting testimonies of the witnesses. Nonetheless, we find rude and disrespectful the utterances made by respondent against complainant, who was already 70 years old at that time. The tenor of the message cannot be taken lightly. It was meant to annoy and humiliate complainant. Not only was it ill-mannered; it was also unbecoming of a lawyer, considering that he did it to an elderly and in front of co-litigants and National Labor Relations Commission employees.

Elderly people have, in our society, occupied a revered stature. We teach our children to treat elders with utmost respect. A special week is dedicated to the elderly every year to give them recognition and honor in order to raise the people's level of awareness of the important role senior citizens play in society.[35]

Under the 1987 Constitution, it is the duty of the family and the state to care for its elderly members.[36] Pursuant to this provision and the constitutional principles on social justice[37] and priority of the elderly to an integrated and comprehensive health delivery system,[38] Republic Act No. 7432,[39] otherwise

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[35] Proc. No. 757 (1996).

[36] CONST., Art. XV, Sec. 4 provides:

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

[37] CONST., Art II, Sec. 10 provides:

SECTION 10. The State shall provide social justice in all phases of national development.

[38] CONST., Art. XIII, Sec. 11 provides:

SECTION 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women and children.

[39] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes (1992).

known as the Senior Citizens Act, was passed into law on April 23, 1992. Republic Act No. 7432, as amended by Republic Act No. 9257,[40] grants certain privileges and benefits to senior citizens in accordance with the following declared policies:

(a) To motivate and encourage the senior citizens to contribute to nation building;

(b) To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(c) To give full support to the improvement of the total well-being of the elderly and their full participation in society considering that senior citizens are integral part of Philippine society;

(d) To recognize the rights of senior citizens to take their proper place in society. This must be the concern of the family, community, and government;

(e) To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing; and

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

Republic Act No. 9994, otherwise known as the Expanded Senior Citizen Act of 2010, further amended the policies and objectives, as follows:

(a) To recognize the rights of senior citizens to take their proper place in society and make it a concern of the family, community, and government;

(b) To give full support to the improvement of the total well-being of the elderly and their full participation in society, considering that senior citizens are integral part of Philippine society;

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[40] Rep. Act No. 9257 is otherwise known as the Expanded Senior Citizens Act of 2003 (2004).

(c) To motivate and encourage the senior citizens to contribute to nation building;

(d) To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(e) To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing; and

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

As servants of the law, lawyers must be model citizens and set the example of obedience to law. The practice of law is a privilege bestowed on lawyers who meet high standards of legal proficiency and morality.[41] Canon 1 of the Code of Professional Responsibility expresses the lawyer's fundamental duty to "uphold the Constitution, obey the laws of the land[,] and promote respect for law[.]" Respondent's display of improper attitude and arrogance toward an elderly constitute conduct unbecoming of a member of the legal profession and cannot be tolerated by this court.

Respondent also violated Canon 7 of the Code of Professional Responsibility, which enjoins lawyers to uphold the dignity and integrity of the legal profession at all times. Rule 7.03 provides:

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflect on his fitness to practice law, nor shall he, whether in public or private life behave in scandalous manner to the discredit of the legal profession.

Furthermore, Rule 8.01 of Canon 8 requires a lawyer to employ respectful and restrained language in keeping with the dignity of the legal profession.[42] Although the remark was allegedly

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[41] *Noble III v. Ailes,* A.C. No. 10628 (Resolution), July 1, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/10628.pdf> [Per *J.* Perlas-Bernabe, First Division].

[42] See *Lubiano v. Gordolla,* 201 Phil. 47 (1982) [Per *J.* Escolin, Second Division].

made in response to undue provocation and pestering on the part of complainant, respondent should have exercised restraint. Notwithstanding his personal opinion on the merits of complainant's claims (in light of the defective notarization in the Memorandum of Agreement dated June 7, 2014), it was improper for respondent to state that even if complainant brought 10 (or as many) lawyers as he wanted, he would not prosper in his claims against the Mayon Council. Careless remarks such as this tend to create and promote distrust in the administration of justice, undermine the people's confidence in the legal profession, and erode public respect for it. "Things done cannot be undone and words uttered cannot be taken back."[43]

Ill feelings between litigants may exist, but they should not be allowed to influence counsels in their conduct and demeanor towards each other or towards suitors in the case. As officers of the court and members of the bar, lawyers are expected to be always above reproach.[44] They cannot indulge in offensive personalities. They should always be temperate, patient, and courteous both in speech and conduct, not only towards the court but also towards adverse parties and witnesses.[45]

In *Santiago v. Oca*:[46]

> The Court may suspend or disbar a lawyer for "any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor," whether in his professional or private life because "good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege."
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> Thus, it has been ruled:

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[43] *Dallong-Galicinao v. Castro,* 510 Phil. 478, 486 (2005) [Per *J.* Tinga, Second Division].

[44] *Sanchez v. Somoso,* 459 Phil. 209 (2003) [Per *J.* Vitug, First Division].

[45] *Macias v. Malig,* 241 Phil. 455 (1988) [Per *J.* Feliciano, Third Division].

[46] A.C. No. 10463 (Notice), July 1, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/resolutions/2015/07/10463.pdf> [Second Division].

> To note, "the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession." This proceeds from the lawyer's duty to observe the highest degree of morality in order to safeguard the Bar's integrity. Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.[47]

In *Sangalang v. Intermediate Appellate Court,*[48] the respondent was suspended for three (3) months for his insulting language in his motion for reconsideration amounting to disrespect toward this court. In *Torres v. Javier,*[49] the respondent was suspended for one (1) month for employing offensive and improper language in his pleadings.

In this case, we find suspension from the practice of law for one (1) month a reasonable sanction for respondent's misconduct.

II

With respect to the other charges against respondent, we find them to have not been adequately proven.

Complainant avers that it was immoral and gross misconduct on the part of respondent, who was not a party to the case, to prevent the due implementation of the Memorandum of Agreement dated June 7, 2014. Complainant further points to the following statements of respondent as shown in the Minutes of the Executive Committee Meeting dated June 30, 2014:[50]

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[47] *Id*. at 3, *citing Spouses Donato v. Asuncion, Sr.,* 468 Phil. 329, 335 (2004) [Per *J.* Sandoval-Gutierrez, Third Division]; *Chu v. Guico,* A.C. No. 10573, January 13, 2015 <http://sc.judiciary.gov.ph/jurisprudenee/2015/january2015/10573.pdf> 6 [*Per Curiam, En Banc*]; and *Abella v. Barrios, Jr.,* A.C. No. 7332, June 18, 2013, 698 SCRA 683, 692 [Per *J.* Perlas-Bemabe, *En Banc*].

[48] 257 Phil. 930 (1989) [Per *J.* Sarmiento, *En Banc*].

[49] 507 Phil. 397 (2005) [Per *J.* Carpio Morales, Third Division].

[50] *Rollo,* pp. 19-22.

Mr. Balayo, the counsel, averred that while the case may not be brought before the Ombudsman, a case may arise, before any court, criminally, to which his client claims protection from and further averred that the Council may be held liable, more those who voted in favor of the agreement.

. . . .

Mr. Balayo again stressed the situation of "doing things right" and "doing the right thing." That while the board wanted to do what is right, Mr. Canlapan however, was not able to bring his claim timely, and therefore his right to do so is already forfeited and waived under the Labor Code.[51]

Complainant argues that the foregoing actuations of respondent violate Canon 12, Rule 12.04, which demands that lawyers should not "unduly delay a case, impede the execution of judgment or misuse court processes." He adds that respondent should have encouraged the peaceful resolution of the labor case considering that the parties had already signed the compromise agreement.

We find nothing improper in the actions and statements of respondent. What respondent did was a mere honest effort to protect the interest of his client, the Chair of the Boy Scouts of the Philippines — Mayon Albay Council. The Boy Scouts of the Philippines is a public corporation or government instrumentality; hence, the money to be paid to complainant is public money and subject to audit by the Commission on Audit.[52] Hence, if the Memorandum of Agreement causes any undue injury to any party, including the government, the parties to the Agreement can be brought to court on administrative and/ or criminal charges.

It was Fajut who went to respondent's office to seek legal advice after he was informed by a former Mayon Council employee that the Agreement was invalid. Respondent rendered his legal opinion dated June 10, 2014 in response to a query

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[51] *Id*. at 20.

[52] See *Boy Scouts of the Philippines v. Commission on Audit,* 666 PhiL 140 (2011) [Per *J.* Leonardo-de Castro, *En Banc*].

posed by Fajut pertaining to the legality of the payment of accrued sick leave benefits to complainant. In his opinion, respondent advised Fajut to retrieve the Compromise Agreement that he improvidently signed, to cause its cancellation, or to move for its disapproval before the Labor Arbiter on the following grounds: (1) complainant failed to present evidence (such as his Daily Time Record) to prove his factual claim that he never utilized his sick leave and vacation leave for 39 years; and (2) even assuming that complainant's claim that he never availed himself of sick leaves was factually true, there was no basis to approve a claim that goes back 39 years.

Respondent further explained that the Boy Scout of the Philippines Employees Manual showed that commutation of unused sick leaves must be done at the end of each year. Necessarily, the claim of commutation to cash of unused sick leaves for years 1975 to 2010 was already barred by Article 291[53] of the Labor Code. Respondent advised that at most, complainant could only claim benefits for a period of three (3) years.

Respondent appeared in the proceedings before the Labor Arbiter on behalf of Fajut and only for the very limited purpose of pointing out to the Labor Arbiter the defect in the notarization of the Memorandum of Agreement. It was Fajut who approached

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[53] LABOR CODE, Art. 291 provides:

Art. 291. *Money claims.* All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with the implementing rules and regulations of the Code; otherwise, they shall be forever barred.

Workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974, shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975; otherwise, they shall forever be barred. The claims shall be processed and adjudicated in accordance with the law and rules at the time their causes of action accrued.

respondent and asked him to make a special appearance on his behalf for the sole reason that complainant chose to present to the Labor Arbiter a defectively notarized Agreement, one which a signatory thereof actively tried to have cancelled in view of his doubts as to its validity.

Moreover, respondent's participation and statements in the June 30, 2014 Executive Committee meeting cannot be characterized as malicious and unprofessional. The issue of the criminal liability of those who voted in favor of the Agreement arose because of the threats of criminal cases to be filed by a certain Mr. Redillas and a certain Mr. Navarra, both former officers of the Mayon Council.[54] It is clear that respondent was merely expressing his legal opinion and not advocating any course of action.

We hold that the foregoing acts do not amount to obstruction of the administration of justice. It is the right of every lawyer, without fear or favor, to give proper advice to those seeking relief. Respondent's assertiveness in espousing with candor his client's cause was merely in accord with his duty to act in the best interests of his client.[55]

WHEREFORE, this court finds Atty. William B. Balayo guilty of conduct unbecoming of a lawyer and violating Canon 1, Canon 7, Rule 7.03, and Canon 8, Rule 8.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for one (1) month and **WARNED** that commission of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

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[54] *Rollo,* p. 19.

[55] Code of Professional Responsibility, Canon 17 provides:

Canon 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

SECOND DIVISION

[G.R. No. 175760. February 17, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SOGOD DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

POLITICAL LAW; PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); JUDICIAL CONFIRMATION OF TITLE; THE AGRICULTURAL LAND SUBJECT OF THE APPLICATION NEEDS ONLY TO BE CLASSIFIED AS ALIENABLE AND DISPOSABLE AS OF THE TIME OF THE APPLICATION, BUT THE APPLICANT'S POSSESSION UNDER A BONA FIDE CLAIM OF OWNERSHIP MUST DATE BACK TO JUNE 12, 1945, OR EARLIER.— Section 48(b) of Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act requires possession under a bona fide claim of ownership since June 12, 1945 for a judicial confirmation of title. x x x This court in *Heirs of Mario Malabanan v. Republic* has clarified that the fixed date of June 12, 1945 qualifies possession and occupation, not land classification, as alienable and disposable. The agricultural land subject of the application needs only to be classified as alienable and disposable as of the time of the application, provided the applicant's possession and occupation of the land dates back to June 12, 1945, or earlier.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Sebastian Liganor Galinato and Alamis for respondent.

D E C I S I O N

LEONEN, *J.*:

For a judicial confirmation of title under Section 48(b) of the Public Land Act, the land subject of the application needs

only to be alienable and disposable as of the time of the application, provided the applicant's possession and occupation of the land dates back to June 12, 1945, or earlier.

This Petition for Review on Certiorari[1] seeks to annul and set aside the Decision[2] dated August 25, 2005 and Resolution[3] dated November 7, 2006 of the Court of Appeals Cebu City in CA-G.R. CV No. 72389.[4] The Court of Appeals affirmed[5] the Decision dated May 10, 2001 of the Municipal Circuit Trial Court of Catmon-Carmen-Sogod, Cebu, which granted respondent Sogod Development Corporation's (Sogod) application for original registration of title over Lot No. 2533, Cadastre 827-D, situated in Tabunok, Sogod, Cebu.[6]

On December 9, 1999, Sogod filed an application for registration and confirmation of land title over Lot No. 2533, Cad. 827-D with an area of 23,896 square meters and situated in Brgy. Tabunok, Municipality of Sogod, Province of Cebu.[7] The case was docketed as Land Registration Case No. 016-SO.[8]

Sogod claimed that it purchased the land "from Catalina Rivera per deed of absolute sale dated Oct[ober] 28, 1996[.]"[9] It also

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[1] *Rollo*, pp. 102-147. The Petition was filed pursuant to Rule 45 of the Rules of Court.

[2] *Id*. at 150-160. The Decision was penned by Senior Associate Justice Pampio A. Abarintos and concurred in by Executive Justice Mercedes Gozo-Dadole and Junior Associate Justice Ramon M. Bato, Jr. of the Eighteenth Division.

[3] *Id*. at 174. The Resolution was penned by Associate Justice Pampio A. Abarintos (Chair) and concurred in by Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla of the Twentieth Division.

[4] *Id*. at 102-103.

[5] *Id*. at 160, Court of Appeals Decision.

[6] *Id*. at 150.

[7] *Id*. at 150-151.

[8] *Id*. at 107, Petition for Review on *Certiorari*.

[9] *Id*. at 151, Court of Appeals Decision.

averred that "by itself and through its predecessors-in-interest[,] [it had] been in open, continuous, exclusive[,] and notorious possession and occupation of [the land] since June 12, 1945[.]"[10]

On February 11, 2000, the Office of the Solicitor General moved to dismiss the Petition[11] on the ground that Sogod was disqualified from applying for original registration of title to alienable lands pursuant to Article XII, Section 3 of the 1987 Constitution.[12]

The trial court issued an Order dated June 15, 2000 pronouncing a "general default against all persons except against the Solicitor General[.]"[13]

On September 19, 2000, the Regional Executive Director of the Department of Environment and Natural Resources, Region VII, Banilad, Mandaue City filed an Opposition on the ground that the land was previously forest land and "was certified and released as alienable and disposable only on January 17, 1986."[14] Thus, it could not be registered without violating Section 48, paragraph (b) of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended by Republic Act No. 6940.[15]

Apart from presenting documentary evidence, Sogod also presented witnesses Celedonio Campos, Jr., Bonifacia Sugarol, and Ranito Quadra to prove its ownership and possession of the land.[16] According to their testimonies, the land "was originally in the possession of Ignacia Rivera, the mother of Catalina."[17]

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[10] *Id*.

[11] *Id*.

[12] *Id*. at 109, Petition for Review on *Certiorari*.

[13] *Id*. at 151, Court of Appeals Decision.

[14] *Id*. at 152.

[15] *Id*.

[16] *Id*. at 105-106 and 114-115, Petition for Review on *Certiorari*.

[17] *Id*. at 114.

"Catalina inherited this land from her mother[.]"[18] On October 28, 1996, Catalina sold the land to Sogod.[19] "A tax clearance dated July 30, 1999 was issued by the Office of the Municipal Treasurer, certifying that all taxes over the land covered by Tax Declaration No. 043-6156 had been paid."[20] "Thereafter, Tax Declaration No. 11096 A was issued in the name of [Sogod]."[21]

The Office of the Solicitor General did not present any controverting evidence.[22]

On May 10, 2001, the trial court rendered the Decision[23] granting the application.[24] The Decision stated, in part:

> The facts presented show that the applicant corporation and its predecessor-in-interest have been in open, continuous, exclusive, notorious and undisturbed possession of the land, subject of this application for registration of title for not less than fifty (50) years or since time immemorial. The state did not present evidence to controvert these facts.
>
> WHEREFORE, from all the foregoing undisputed facts which are supported by oral and documentary evidence, the court finds and so holds that the applicant, Sogod Development Corporation represented by Celedonio Campos, Jr. has a registrable title to the land sought to be registered, hereby confirming the same and ordering its registration under Act 494, as amended by Presidential Decree No. 1529 over Lot 2533, Cad 827-D, situated in Tabunok, Sogod, Cebu, Island of Cebu, Philippines, as described in Plan As-07-001393, and strictly in line with its Technical Description, upon the finality of this decision.[25]

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[18] *Id*.

[19] *Id*.

[20] *Id*. at 114-115.

[21] *Id*. at 115.

[22] *Id*. at 152, Court of Appeals Decision.

[23] *Id*. The Decision was penned by Judge Manuel D. Patalinghug.

[24] *Id*.

[25] *Id*.

The Office of the Solicitor General appealed to the Court of Appeals.[26] According to the Office of the Solicitor General, the trial court erred in allowing the titling of Lot No. 2533 because:

(1) Sogod failed to prove its open, continuous, exclusive, and notorious possession and occupation of the land since June 12, 1945 or earlier;[27]

(2) The tax declarations presented by Sogod "are of recent vintage"[28] and are "not accompanied by proof of actual possession . . . since June 12, 1945[;]"[29]

(3) The land was only declared alienable and disposable on January 17, 1986, pursuant to Forestry Administrative Order No. 4-1611,[30] "making it impossible for [Sogod] and its predecessors-in-interest to have possessed the land in concept of an owner since June 12, 1945 or earlier[;]"[31] and

(4) "Article XII, Section 3 of the 1987 Constitution disqualifies private corporations from applying for original registration of title to alienable lands."[32]

On August 25, 2005, the Court of Appeals rendered its Decision affirming the Decision of the 6th Municipal Circuit Trial Court of Catmon-Carmen-Sogod, Cebu.[33] It ruled that Sogod was able to prove that "it and its predecessors-in-interest ha[d] been in possession of [Lot No. 2533] since June 12, 1945 or earlier and the land sought to be registered is an agricultural land[.]"[34]

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[26] *Id*.

[27] *Id*. at 153.

[28] *Id*.

[29] *Id*.

[30] *Id*. at 155.

[31] *Id*. at 153.

[32] *Id*.

[33] *Id*. at 160.

[34] *Id*. at 159.

Upholding the corporation's right to file the application before the court *a quo*, the Court of Appeals held that lands possessed in the manner and for the period required by Section 48 of Commonwealth Act No. 141 become *ipso jure* private lands.[35] Judicial confirmation in this case would only be a formality to confirm "the earlier conversion of the land into private land[.]"[36]

The Office of the Solicitor General moved for reconsideration[37] of the Court of Appeals Decision. In the Resolution dated November 7, 2006, the Court of Appeals denied the Motion for Reconsideration for lack of merit.[38]

Hence, the present Petition for Review was filed. Respondent Sogod Development Corporation assigns the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALLOWED THE TITLING OF LOT NO. 2533 DESPITE RESPONDENT'S FAILURE TO SHOW THAT IT AND ITS PREDECESSORS-IN-INTEREST HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN UNDER A BONAFIDE CLAIM OF OWNERSHIP SINCE JUNE 12, 1945 OR PRIOR THERETO.

II

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE TRIAL COURT'S DECISION, GRANTING RESPONDENT'S APPLICATION FOR REGISTRATION OF LOT NO. 2533 IN VIEW OF THE OPPOSITION DATED SEPTEMBER 13, 2000 OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) STATING THAT SAID PROPERTY WAS ONLY DECLARED ALIENABLE AND DISPOSABLE ON JANUARY 17, 1986.

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[35] *Id*. at 158-159.

[36] *Id*. at 159.

[37] *Id*. at 161-172.

[38] *Id*. at 174.

III

THE HONORABLE COURT OF APPEALS ERRED IN GRANTING RESPONDENT'S APPLICATION FOR REGISTRATION OF TITLE SINCE ARTICLE XII, SECTION 3 OF THE 1987 CONSTITUTION DISQUALIFIES PRIVATE CORPORATIONS FROM APPLYING FOR ORIGINAL REGISTRATION OF ALIENABLE LANDS.

IV

THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE TRIAL COURT'S DECISION DATED AUGUST 2, 2001, GRANTING THE APPLICATION FOR REGISTRATION OF TITLE OF THE RESPONDENT ON THE BASES OF TAX DECLARATIONS WHICH ARE OF RECENT VINTAGE.[39]

Respondent filed its Comment,[40] to which petitioner filed its Reply.[41] On May 30, 2011, the court gave due course to the Petition and required the parties to submit their respective memoranda.[42]

Petitioner and respondent filed their memoranda on January 4, 2012[43] and October 15, 2014,[44] respectively.

Petitioner raises the following issues in its Memorandum:

First, "whether the occupation of forest land prior to its classification as alienable and disposable land may be considered for purposes of complying with the requirements for judicial confirmation of title[;]"[45] and

Second, "whether [respondent] and its predecessors-in-interest have possessed the property in the manner and length of time required by law."[46]

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[39] *Id*. at 116-117, Petition for Review on *Certiorari*.

[40] *Id*. at 192-194.

[41] *Id*. at 204-211.

[42] *Id*. at 219, Supreme Court Resolution.

[43] *Id*. at 245-259.

[44] *Id*. at 326-342.

[45] *Id*. at 248, Republic's Memorandum.

[46] *Id*.

Petitioner contends that since the "application for registration was filed on December 9, 1999, respondent could only be considered in bona fide possession for a period of 13 years from the time [the land] was classified as alienable and disposable [in 1986]."[47] It adds that any possession or occupation of the land prior to its declaration as "alienable and disposable cannot be counted for purposes of acquisitive prescription because forest lands are not susceptible of [private appropriation]."[48] It further argues that Section 48(b) of Commonwealth Act No. 141, as amended, "applies exclusively to alienable and disposable public agricultural land[,] [and] [f]orest lands are excluded."[49]

Moreover, petitioner contends that possession in good faith "is important in the consideration of whether the applicant has acquired a grant of registrable title from the government."[50] "The alienable nature of the land is essential to the bona fide claim of ownership and possession since June 12, 1945."[51]

Even if the court's ruling in *Heirs of Mario Malabanan v. Republic*[52] is applied, respondent's possession would allegedly be short of the length of time required by law.[53] The earliest tax declaration presented by respondent is 1947, which was "short of the June 12, 1945 requirement of [the] law."[54] According to petitioner, "[a] statement that a tax declaration for the year 1945 existed does not equate to clear and convincing proof of possession required by law considering further that the person who declared the property [could not] be precisely determined."[55]

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[47] *Id*.

[48] *Id*. at 249.

[49] *Id*.

[50] *Id*. at 251.

[51] *Id*. at 253.

[52] 605 Phil. 244 (2009) [Per *J.* Tinga, *En Banc*].

[53] *Rollo*, p. 255, Republic's Memorandum.

[54] *Id*. at 256.

[55] *Id*.

Petitioner also "point[s] out that the total area . . . declared by respondent's predecessor's-in-interest [sic] [was] at most 21,000 square meters as opposed to the area of 23,456[56] [square] meters [that was] sought to be registered."[57] Finally, according to petitioner, "it does not appear that respondent submitted a document proving that Catalina Rivera inherited the property from her mother."[58]

On the other hand, respondent's application, even when considered under Section 14(2) of Presidential Decree No. 1529, "must still be dismissed for failure to prove the existence of an express government manifestation that the property is already patrimonial."[59]

Respondent counters that factual issues could not be raised in a petition for review on certiorari, and the findings of the trial court and the Court of Appeals "that the respondent and its predecessor-in-interest have been in open, continuous, exclusive, notorious, and adverse possession of the . . . land since 12 June 1945 or earlier"[60] must be respected.[61]

Respondent contends that it sufficiently complied with the requirements of the law. First, the land applied for was alienable and disposable when it filed its application in 1999.[62] Citing *Republic v. Court of Appeals and Naguit*,[63] respondent contends that "it [was] enough that the land [was] declared as alienable and disposable prior to the filing of the application for registration and not at the start of possession[.]"[64] Second, it and its

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[56] The land area should be 23,896 square meters.

[57] *Id*.

[58] *Id*.

[59] *Id*. at 257.

[60] *Id*. at 329, Sogod Development Corporation's Memorandum.

[61] *Id*. at 329-330.

[62] *Id*. at 335.

[63] 489 Phil. 405 (2005) [Per *J.* Tinga, Second Division].

[64] *Rollo*, p. 332, Sogod Development Corporation's Memorandum.

predecessor-in-interest "occupied and possessed the land openly, continuously, exclusively, and adversely under a bona fide claim of ownership since [June 12,] 1945 or earlier."[65]

Contrary to petitioner's claim, respondent stresses that it was able to present the tax declaration for 1945.[66] Moreover, "the various tax declarations, which prove continuity and without intermission, and the tax clearance all in the name of Catalina Rivera[,] support the claim that [she] was in possession of the . . . land since 1945 and even earlier[.]"[67] Respondent adds that "both the trial court and the Court of Appeals found that the . . . land was planted with corn[.]"[68] "[P]lanting of corn requires cultivation and fostering[,] which proves that the possession by Catalina Rivera was actual, open and continuous."[69]

We deny the Petition.

The main issue revolves around the proper interpretation of Section 48(b) of Commonwealth Act No. 141, as amended,[70] otherwise known as the Public Land Act, which requires possession under a bona fide claim of ownership since June 12, 1945 for a judicial confirmation of title:

SECTION 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

. . . .

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[65] *Id*. at 335.

[66] *Id*.

[67] *Id*. at 339.

[68] *Id*. at 336-37.

[69] *Id*. at 338.

[70] Com. Act No. 141 (1936), Sec. 48(b) has been amended by Pres. Decree No. 1073 (1977), Sec. 4.

(b) *Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title*, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied)

A similar provision is found in Section 14(1) of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, which reads:

SECTION 14. *Who May Apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

This court in *Heirs of Mario Malabanan v. Republic*[71] has clarified that the fixed date of June 12, 1945 qualifies possession and occupation, not land classification, as alienable and disposable.[72] The agricultural land subject of the application needs only to be classified as alienable and disposable as of the time of the application, provided the applicant's possession and occupation of the land dates back to June 12, 1945, or earlier.[73] Thus:

The dissent stresses that the classification or reclassification of the land as alienable and disposable agricultural land should likewise

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[71] G.R. No. 179987, September 3, 2013, 704 SCRA 561 [Per *J*. Bersamin, *En Banc*].

[72] *Id*. at 581.

[73] *Id*. at 581-582.

have been made on June 12, 1945 or earlier, because any possession of the land prior to such classification or reclassification produced no legal effects. It observes that the fixed date of June 12, 1945 could not be minimized or glossed over by mere judicial interpretation or by judicial social policy concerns, and insisted that the full legislative intent be respected.

We find, however, that the choice of June 12, 1945 as the reckoning point of the requisite possession and occupation was the sole prerogative of Congress, the determination of which should best be left to the wisdom of the lawmakers. Except that said date qualified the period of possession and occupation, no other legislative intent appears to be associated with the fixing of the date of June 12, 1945. Accordingly, the Court should interpret only the plain and literal meaning of the law as written by the legislators.

Moreover, an examination of Section 48 (b) of the *Public Land Act* indicates that Congress prescribed no requirement that the land subject of the registration should have been classified as agricultural since June 12, 1945, or earlier. As such, the applicant's imperfect or incomplete title is derived only from possession and occupation since June 12, 1945, or earlier. This means that the character of the property subject of the application as alienable and disposable agricultural land of the public domain determines its eligibility for land registration, not the ownership or title over it. Alienable public land held by a possessor, either personally or through his predecessors-in-interest, openly, continuously and exclusively during the prescribed statutory period is converted to private property by the mere lapse or completion of the period. In fact, by virtue of this doctrine, corporations may now acquire lands of the public domain for as long as the lands were already converted to private ownership, by operation of law, as a result of satisfying the requisite period of possession prescribed by the *Public Land Act.* It is for this reason that the property subject of the application of Malabanan need not be classified as alienable and disposable agricultural land of the public domain for the entire duration of the requisite period of possession.

To be clear, then, the requirement that the land should have been classified as alienable and disposable agricultural land at the time of the application for registration is necessary only to dispute the presumption that the land is inalienable.[74] (Citations omitted)

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[74] *Id*. at 580-582.

The ruling in *Heirs of Malabanan* adopted the earlier interpretation in *Republic v. Court of Appeals and Naguit*[75] that Section 14(1) of the Property Registration Decree "merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed."[76] This court also emphasized in *Naguit* the absurdity that would result in interpreting Section 14(1) as requiring that the public land should have already been characterized as alienable by June 12, 1945.[77]

Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.[78]

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[75] 489 Phil. 405 (2005) [Per *J.* Tinga, Second Division].

[76] *Id*. at 414.

[77] *Id*.

[78] *Id*.

Untenable is petitioner's reliance on *Republic v. Diloy*,[79] which pronounced that the period of possession before the declaration that land is alienable and disposable agricultural land should be excluded in the computation of possession for purposes of confirmation of imperfect title.[80] *Diloy* was based on *Republic v. Herbieto*,[81] which was expressly declared in *Heirs of Malabanan* to be incorrect and without precedental value with respect to Section 14(1). The court declared that:

> [T]he correct interpretation of Section 14(1) is that which was adopted in *Naguit*. The contrary pronouncement in *Herbieto*, as pointed out in *Naguit*, absurdly limits the application of the provision to the point of virtual inutility since it would only cover lands actually declared alienable and disposable prior to 12 June 1945, even if the current possessor is able to establish open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership long before that date.
>
> Moreover, the *Naguit* interpretation allows more possessors under a *bona fide* claim of ownership to avail of judicial confirmation of their imperfect titles than what would be feasible under *Herbieto*. This balancing fact is significant, especially considering our forthcoming discussion on the scope and reach of Section 14(2) of the Property Registration Decree.
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> . . . .
>
> Thus, neither *Herbieto* nor its principal discipular ruling *Buenaventura* has any precedental value with respect to Section 14(1). On the other hand, the ratio of *Naguit* is embedded in Section 14(1), since it precisely involved [a] situation wherein the applicant had been in exclusive possession under a *bona fide* claim of ownership prior to 12 June 1945. The Court's interpretation of Section 14(1) therein was decisive to the resolution of the case. Any doubt as to which between *Naguit* or *Herbieto* provides the final word of the Court on Section 14(1) is now settled in favor of *Naguit*.[82]

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[79] 585 Phil. 404 (2008) [Per *J.* Chico-Nazario, Third Division].

[80] *Id*. at 415.

[81] 498 Phil. 227 (2005) [Per *J.* Chico-Nazario, Second Division].

[82] *Heirs of Mario Malabanan v. Republic*, 605 Phil. 244, 269-271 (2009) [Per *J*. Tinga, *En Banc*].

Petitioner's claim that "[t]he alienable nature of the land is essential to the bona fide claim of ownership and possession since June 12, 1945"[83] is likewise untenable. In *AFP Retirement and Separation Benefits System (AFP-RSBS) v. Republic*:[84]

Although adverse, open, continuous, and notorious possession in the concept of an owner is a conclusion of law to be determined by courts, it has more to do with a person's belief in good faith that he or she has just title to the property that he or she is occupying. It is unrelated to the declaration that land is alienable or disposable. A possessor or occupant of property may, therefore, be a possessor in the concept of an owner prior to the determination that the property is alienable and disposable agricultural land. His or her rights, however, are still to be determined under the law.[85]

We proceed to the second issue relating to the sufficiency of evidence showing the nature and length of respondent's possession over the land. As a rule, factual findings of both the trial court and the Court of Appeals are binding on this court. Petitioner did not show the existence of any exceptions for us to depart from this rule.

The trial court and the Court of Appeals found that respondent applicant had sufficiently proved its and its predecessors-in-interest's continuous possession of the land tracing back to June 12, 1945 or earlier. Possession since 1945 was established through testimonies of respondents' witnesses, the unbroken chain of tax declarations in the name of Catalina Rivera, the person from whom respondent bought the property in 1996,[86] and a certification from the municipal treasurer that all previous taxes had been paid.[87] Tax declarations or realty tax payments constitute at least proof that the holder has a sincere and honest claim of

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[83] *Rollo*, p. 253, Republic's Memorandum.

[84] G.R. No. 180086, July 2, 2014, 728 SCRA 602 [Per *J.* Leonen, Third Division].

[85] *Id.* at 614.

[86] *Rollo*, pp. 338-339, Sogod Development Corporation's Memorandum.

[87] *Id.* at 114-115, Petition for Review on *Certiorari*.

title over the property.[88] Moreover, witness Bonifacia Sugarol, the owner of the adjoining land, stated that the land was owned by Ignacia Rivera and inherited by Catalina; and the land was planted with corn and had many tenants.[89]

Contrary to petitioner's claim, respondent was able to present in evidence the tax declaration for 1945. What were not presented were tax declarations before 1945 because as testified by a representative from the Office of the Municipal Assessor of Sogod, all its records before the war were destroyed. This was discussed by the Court of Appeals, thus:

The applicant also presented a representative from the Office of the Municipal Assessor of Sogod in the person Ranito Quadra relative to the tax declaration history of Lot 2533. The oldest tax declaration on file in the said government office was TD 04024 (marked and submitted as Exh. "CC") for the year 1945. In the said tax declaration, a notation was placed in the entry —

I (a) Land (Agricultural/Mineral)
ASSESSOR'S FINDINGS

Kind	Area	Class	Unit Value	Market Value
Cornland	4.0000	3 a		₱800.00
Maguey	2.0000	1 a		120.00
Pasture	4.0169			120.50
Total	10.0169			₱1040.50

As can be gleaned from the face of this evidence, the land was already devoted to the planting of corn, maguey and the rest was pastureland. Also, i[t] appears that TD 04024 cancelled the previous tax declaration with number TD 1417. A testimony was also adduced by the same witness that the previous tax declarations covering the property cannot be produced anymore because all of their records prior to the Second World War were destroyed.

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[88] *Republic v. Court of Appeals*, 328 Phil. 238, 248 (1996) [Per *J.* Torres, Jr., Second Division].

[89] *Rollo*, pp. 157, Court of Appeals Decision, and 337, Sogod Development Corporation's Memorandum.

Analyzing the above-quoted testimony as well as the documentary evidence submitted, it can be clearly surmised that the land was devoted to agriculture in 1945 and even prior to that year. Based on human experience, the area planted with corn and maguey is a considerable tract of land that it presupposes that the land ceased to be a forest land. Such that, even if the land was declared to be alienable and disposable only in the year 1986, the actual use of Catalina Rivera of this tract of land was already agriculture.[90] (Citations omitted)

Thus, respondent had established (by itself and through its predecessor-in-interest) its possession in the concept of owner of the property since 1945. It is further undisputed that the property was declared alienable and disposable in 1986 prior to respondent's filing of its application in 1999.[91] The Court of Appeals, therefore, did not err in affirming the Municipal Circuit Trial Court Decision granting respondent's application for original registration of title.

WHEREFORE, the Petition is **DENIED** and the Court of Appeals Decision dated August 25, 2005 and Resolution dated November 7, 2006 are **AFFIRMED**.

Carpio (Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

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[90] *Id*. at 157-158, Court of Appeals Decision.

[91] *Id*. at 155.

SECOND DIVISION

[G.R. No. 177382. February 17, 2016]

VIVA SHIPPING LINES, INC., *petitioner, vs.* **KEPPEL PHILIPPINES MARINE, INC., METROPOLITAN BANK & TRUST COMPANY, PILIPINAS SHELL PETROLEUM CORPORATION, CITY OF BATANGAS, CITY OF LUCENA, PROVINCE OF QUEZON, ALEJANDRO OLIT, NIDA MONTILLA, PIO HERNANDEZ, EUGENIO BACULO, and HARLAN BACALTOS,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION AS REMEDY AVAILABLE FOR AN INSOLVENT BUSINESS.—** Corporate rehabilitation is a remedy for corporations, partnerships, and associations "who [foresee] the impossibility of meeting [their] debts when they respectively fall due." A corporation under rehabilitation continues with its corporate life and activities to achieve solvency, or a position where the corporation is able to pay its obligations as they fall due in the ordinary course of business. Solvency is a state where the businesses' liabilities are less than its assets. Corporate rehabilitation is a type of proceeding available to a business that is insolvent. In general, insolvency proceedings provide for predictability that commercial obligations will be met despite business downturns. Stability in the economy results when there is assurance to the investing public that obligations will be reasonably paid. x x x The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because "assets . . . are often more valuable when so maintained than they would be when liquidated." Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors to be paid equitably. These interests are also referred to as the *rehabilitative* and the *equitable* purposes of corporate

rehabilitation. x x x Currently, the prevailing law and procedure for corporate rehabilitation is the Financial Rehabilitation and Insolvency Act of 2010 (FRIA). x x x issued by this court on August 27, 2013. However, since the Regional Trial Court acted on petitioner's Amended Petition before FRIA was enacted, Presidential Decree No. 902-A and the Interim Rules of Procedure on Corporate Rehabilitation were applied to this case.

2. **ID.; ID.; LIQUIDATION AS REMEDY WHEN CORPORATE REHABILITATION CAN NO LONGER BE ACHIEVED; DISCUSSED.—** [T]here are instances when corporate rehabilitation can no longer be achieved. When rehabilitation will not result in a better present value recovery for the creditors, the more appropriate remedy is liquidation. It does not make sense to hold, suspend, or continue to devalue outstanding credits of a business that has no chance of recovery. In such cases, the optimum economic welfare will be achieved if the corporation is allowed to wind up its affairs in an orderly manner. Liquidation allows the corporation to wind up its affairs and equitably distribute its assets among its creditors. Liquidation is diametrically opposed to rehabilitation. Both cannot be undertaken at the same time. In rehabilitation, corporations have to maintain their assets to continue business operations. In liquidation, on the other hand, corporations preserve their assets in order to sell them. Without these assets, business operations are effectively discontinued. The proceeds of the sale are distributed equitably among creditors, and surplus is divided or losses are re-allocated. Proceedings in case of insolvency are not limited to rehabilitation. Our laws have evolved to provide for different procedures where a debtor can undergo judicially supervised reorganization or liquidation of its assets.

3. **ID.; ID.; INTERIM CORPORATE REHABILITATION RULE; RULES FOR APPEALING CORPORATE REHABILITATION DECISIONS; NON-COMPLIANCE WARRANTS DISMISSAL; CASE AT BAR.—** Any final order or decision of the Regional Trial Court may be subject of an appeal. In *Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission,* this court clarified that all decisions and final orders falling under the Interim Rules of Procedure on Corporate Rehabilitation

shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court. *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City* clarifies that an appeal from a final order or decision in corporate rehabilitation proceedings may be dismissed for being filed under the wrong mode of appeal. *New Frontier Sugar* doctrinally requires compliance with the procedural rules for appealing corporate rehabilitation decisions. x x x Petitioner did not comply with some of these requirements. First, it did not implead its creditors as respondents. Instead, petitioner only impleaded the Presiding Judge of the Regional Trial Court, contrary to Section 6(a) of Rule 43. Second, it did not serve a copy of the Petition on some of its creditors, specifically, its former employees. Finally, it did not serve a copy of the Petition on the Regional Trial Court. x x x The Court of Appeals correctly dismissed petitioner's Rule 43 Petition as a consequence of non-compliance with procedural rules.

4. **ID.; ID.; ID.; ID.; ID.; FAILURE OF PETITIONER TO IMPLEAD ITS CREDITORS AS RESPONDENTS CANNOT BE CURED BY SERVING COPIES OF THE PETITION TO ITS CREDITORS.—** There are two kinds of "liberality" with respect to the construction of provisions of law. The first requires ambiguity in the text of the provision and usually pertains to a situation where there can be two or more viable meanings given the factual context presented by a case. x x x Then there is the "liberality" that actually means a request for the suspension of the operation of a provision of law, whether substantive or procedural. This liberality requires equity. x x x The factual antecedents of a plea for the exercise of liberality must be clear. There must also be a showing that the factual basis for a plea for liberality is not one that is due to the negligence or design of the party requesting the suspension of the rules. Likewise, the basis for claiming an equitable result—for all the parties—must be clearly and sufficiently pleaded and argued. x x x [Here,] [t]he failure of petitioner to implead its creditors as respondents cannot be cured by serving copies of the Petition on its creditors. x x x Petitioner's failure to implead them deprived them of a fair hearing. x x x [L]iberality in corporate rehabilitation procedure only generally refers to the trial court, not to the proceedings before the appellate court.

5. **ID.; ID.; ID.; AMENDED PETITION FOR CORPORATE REHABILITATION CORRECTLY DISMISSED UPON FINDING THAT REHABILITATION IS NO LONGER VIABLE FOR PETITIONER.—** The Regional Trial Court correctly dismissed the Amended Petition for Corporate Rehabilitation x x x [upon] finding that rehabilitation is no longer viable for petitioner. Under the Interim Rules of Procedure on Corporate Rehabilitation, a "petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing." The proceedings are also deemed terminated upon the trial court's disapproval of a rehabilitation plan, "or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions."

6. **ID.; ID.; CORPORATE REHABILITATION; NECESSITY OF AN ECONOMICALLY FEASIBLE REHABILITATION PLAN.—** *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.* provides the test to help trial courts evaluate the economic feasibility of a rehabilitation plan: In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that *a thorough examination and analysis of the distressed corporation's financial data* must be conducted. If the results of such examination and analysis show that there is *a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated* in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. *On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible.* In such case, the rehabilitation court may convert the proceedings into one for liquidation.

APPEARANCES OF COUNSEL

Vicente M. Joyas for petitioner.

Puno & Puno for respondent Metropolitan Bank & Trust Co.

Angara Abello Concepcion Regala & Cruz for respondent Pilipinas Shell Petroleum Corp.

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for respondent Keppel Phils. Marine, Inc.

Ramel C. Muria for respondents Alejandro Olit, Nida Montilla, Pio Hernandez, Eugenio Baculo and Harlan Bacaltos.

Teodulfo A. Deguito for respondent Batangas City.

Marvin A. Tan for respondent City Treasurer of Lucena City.

D E C I S I O N

LEONEN, *J.*:

Rule 43 of the Rules of Court prescribes the procedure to assail the final orders and decisions in corporate rehabilitation cases filed under the Interim Rules of Procedure on Corporate Rehabilitation.[1] Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.

On October 4, 2005, Viva Shipping Lines, Inc. (Viva Shipping Lines) filed a Petition for Corporate Rehabilitation before the Regional Trial Court of Lucena City.[2] The Regional Trial Court initially denied the Petition for failure to comply with the requirements in Rule 4, Sections 2 and 3 of the Interim Rules of Procedure on Corporate Rehabilitation.[3]

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[1] A.M. No. 00-8-10-SC, Resolution dated November 21, 2000.

[2] The case was raffled to Branch 57 of the said court.

[3] INTERIM CORP. REHAB. RULE, Rule 4, Sec. 2 provides:

SECTION 2. *Contents of the Petition*. — The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following

material facts: (a) the name and business of the debtor; (b) the nature of the business of the debtor; (c) the history of the debtor; (d) the cause of its inability to pay its debts; (e) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (f) threats or demands to enforce claims or liens against the debtor; and (g) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees, and stockholders. The petition shall be accompanied by the following documents:

a. An audited financial statement of the debtor at the end of its last fiscal year;

b. Interim financial statements as of the end of the month prior to the filing of the petition;

c. Schedule of Debts and Liabilities which lists all the creditors of the debtor indicating the name and address of each creditor, the amount of each claim as to principal, interest, or penalties due as of the date of filing, the nature of the claim, and any pledge, lien, mortgage judgment, or other security given for the payment thereof;

d. An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collectibility categorizing them as highly collectible to remotely collectible;

e. A rehabilitation plan which conforms to the minimal requirements set out in Section 5, Rule 4 of these Rules;

f. A Schedule of Payments and disposition of assets which the debtor may have effected within three (3) months immediately preceding the filing of the petition;

g. A Schedule of the Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;

h. A Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;

i. An Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" hereof;

j. At least three (3) nominees for the position of Rehabilitation Receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax number and e-mail address; and

k. A Certificate attesting, under oath, that (a) the filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

Five (5) copies of its petition shall be filed with the court.

Rule 4, Sec. 3 provides:

SECTION 3. *Verification by Debtor* . — The petition filed by the debtor must be verified by an affidavit of a responsible officer of the debtor and shall be in a form substantially as follows:

"I, _________________, (position) of (name of petitioner), do solemnly swear that the petitioner has been duly authorized to file the petition and that the stockholders and board of directors (or governing body) have approved and/or consented to, in accordance with law, all actions or matters necessary or desirable to rehabilitate the debtor. There is no petition for insolvency filed with any other body, court, or tribunal affecting the petitioner. The Inventory of Assets and the Schedule of Debts and Liabilities contains a full, correct, and true description of all debts and liabilities and of all goods, effects, estate, and property of whatever kind or class belonging to petitioner. The Inventory also contains a full, correct, and true statement of all debts owing or due to petitioner, or to any person or persons in trust for petitioner and of all securities and contracts whereby any money may hereafter become due or payable to petitioner or by or through which any benefit or advantage may accrue to petitioner. The petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of petitioner. Petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the Inventory of Assets. Petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount. Petitioner, its officers, directors, and stockholders have not, directly or indirectly, concealed, fraudulently sold, or otherwise fraudulently disposed of, any part of petitioner's real or personal property, estate, effects, or rights of action, and petitioner, its officers, directors, and stockholders have not in any way compounded with any of its creditors in order to give preference to such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any manner any creditor to whom petitioner is indebted. Petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence."

On October 17, 2005, Viva Shipping Lines filed an Amended Petition.[4]

In the Amended Petition, Viva Shipping Lines claimed to own and operate 19 maritime vessels[5] and Ocean Palace Mall, a shopping mall in downtown Lucena City.[6] Viva Shipping Lines also declared its total properties' assessed value at about ₱45,172,790.00.[7] However, these allegations were contrary to the attached documents in the Amended Petition.

One of the attachments, the Property Inventory List, showed that Viva Shipping Lines owned only two (2) maritime vessels: M/V Viva Peñafrancia V and M/V Marian Queen.[8] The list also stated that the fair market value of all of Viva Shipping Lines' assets amounted to ₱447,860,000.00,[9] ₱400 million more than what was alleged in its Amended Petition. Some of the properties listed in the Property Inventory List were already marked as "encumbered" by its creditors;[10] hence, only ₱147,630,000.00 of real property and its vessels were marked as "free assets."[11]

Viva Shipping Lines also declared the following debts:

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[4] *Rollo,* pp. 45-61, Amended Petition dated October 14, 2005.

[5] *Id*. at 83-84, Regional Trial Court Order dated October 30, 2006. These vessels are: M/V Sto. Niño, M/V Viva Peñafrancia, M/V Viva Peñafrancia II, M/V Viva Peñafrancia III, M/V Viva Peñafrancia IV, M/V Viva Peñafrancia V, M/V Viva Peñafrancia VIII, M/V Sta. Maria, M/V Marian Queen, M/V St. Kristopher, M/V Immaculate Concepcion, M/V San Miguel de Ilijan, M/V San Agustin Reyes, M/V Viva San Jose, M/V Viva Peñafrancia IX, M/V Maria Socorro 2, M/V Sta. Ana, M/V Viva Lady of Lourdes, and M/V Our Lady of Mercy (*Id.* at 48-49).

[6] *Id*. at 48, Amended Petition dated October 14, 2005.

[7] *Id*. at 52.

[8] *Id*. at 70, Property Inventory List attached to the Amended Petition dated October 14, 2005.

[9] *Id*.

[10] *Id*.

[11] *Id*.

Name of Creditor	Nature of Debts	Amount of Obligation
(1) Metropolitan Bank & Trust Company	Loan secured by Real Estate Mortgage	₱176,428,745.50 +
(2) Keppel Philippines Marine, Inc.	Charges for Repair of Vessels	9,000,000.00 +
(3) Province of Quezon, Lucena City, and Province of Batangas, Batangas City	Realty Taxes and Assessments	35,000,000.00 +
	TOTAL[12]	**₱220,428,745.50 +**

According to Viva Shipping Lines, the devaluation of the Philippine peso, increased competition, and mismanagement of its businesses made it difficult to pay its debts as they became due.[13] It also stated that "almost all [its] vessels were rendered unserviceable either because of age and deterioration that [it] can no longer compete with modern made vessels owned by other operators."[14]

In its Company Rehabilitation Plan, Viva Shipping Lines enumerated possible sources of funding such as the sale of old vessels and commercial lots of its sister company, Sto. Domingo Shipping Lines.[15] It also proposed the conversion of the Ocean Palace Mall into a hotel, the acquisition of two (2) new vessels for shipping operations, and the "re-operation"[16] of an oil mill in Buenavista, Quezon.[17]

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[12] This sum was arrived at by adding the debts declared by Viva Shipping Lines, Inc. in its Amended Petition (*rollo*, pp. 51-52), and its Schedule of Debts & Liabilities As of September 30, 2005 (*Id.* at 68). However, in the same Petition, Viva Shipping Lines, Inc. stated that its total liabilities amount to ₱220,873,700.00 (*Id.* at 52).

[13] *Rollo,* pp. 50–51.

[14] *Id*.

[15] *Id*. at 53.

[16] *Id*. at 72.

[17] *Id*.

Viva Shipping Lines nominated two individuals to be appointed as rehabilitation receiver: Armando F. Ragudo, a businessman from Tayabas, Quezon, and Atty. Calixto Ferdinand B. Dauz III, a lawyer from Lucena City.[18] A day after filing the Amended Petition, Viva Shipping Lines submitted the name of a third nominee, Former Judge Jose F. Mendoza (Judge Mendoza).[19]

On October 19, 2005, the Regional Trial Court found that Viva Shipping Lines' Amended Petition to be "sufficient in form and substance," and issued a stay order.[20] It stayed the enforcement of all monetary and judicial claims against Viva Shipping Lines, and prohibited Viva Shipping Lines from selling, encumbering, transferring, or disposing of any of its properties except in the ordinary course of business.[21] The Regional Trial Court also appointed Judge Mendoza as rehabilitation receiver.

Before the initial hearing scheduled on December 5, 2005, the City of Batangas, Keppel Philippines Marine, Inc., and Metropolitan Bank and Trust Company (Metrobank) filed their respective comments and oppositions to Viva Shipping Lines' Amended Petition.[22]

During the initial hearing, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) moved for additional time to write its opposition to Viva Shipping Lines' Amended Petition.[23] Pilipinas Shell later filed its Comment/Opposition with Formal Notice of Claim.[24]

Luzviminda C. Cueto, a former employee of Viva Shipping Lines, also filed a Manifestation and Registration of Monetary

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[18] *Id*. at 79, List of Nominees for the Position of Rehabilitation Receiver, attachment to the Amended Petition dated October 14, 2005.

[19] *Id*. at 765, as alleged by Metropolitan Bank and Trust Company in its Memorandum.

[20] *Id*. at 81, Order dated October 19, 2005.

[21] *Id*.

[22] *Id*. at 84, Regional Trial Court Order dated October 30, 2006.

[23] *Id*. at 85.

[24] *Id*.

Claim stating that Viva Shipping Lines owes her ₱232,000.00 as separation and 13th month pay.[25] The Securities and Exchange Commission filed a Comment informing the Regional Trial Court that Viva Shipping Lines violated certain laws and rules of the Commission.[26]

On March 24, 2006, Judge Mendoza withdrew his acceptance of appointment as rehabilitation receiver.[27] As replacement, Viva Shipping Lines nominated Atty. Antonio Acyatan, while Metrobank nominated Atty. Rosario S. Bernaldo.[28] Keppel Philippines Marine, Inc. adopted Metrobank's nomination.[29]

On April 4, 2006, Metrobank filed a Motion for Production or Inspection of relevant documents relating to Viva Shipping Lines' business operations such as board resolutions, tax returns, accounting ledgers, bank accounts, and contracts.[30] Viva Shipping Lines filed its opposition. However, the Regional Trial Court granted Metrobank's Motion.[31] Viva Shipping Lines failed to comply with the Order to produce the documents,[32] as well as with the Regional Trial Court Order to submit a memorandum.[33]

On September 27, 2006, Viva Shipping Lines' former employees Alejandro Olit, Nida Montilla, Pio Hernandez, Eugenio Baculo, and Harlan Bacaltos[34] (Alejandro Olit, et al.) filed their comment on the Amended Petition, informing the Regional Trial

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[25] *Id*. at 88.

[26] *Id*. at 85.

[27] *Id*. at 86.

[28] *Id*. at 86-87.

[29] *Id*. at 87.

[30] *Id*.

[31] *Id*. at 88.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 13, Petition.

Court of their pending complaint against Viva Shipping Lines before the National Labor Relations Commission.[35]

In the Order dated October 30, 2006,[36] the Regional Trial Court lifted the stay order and dismissed Viva Shipping Lines' Amended Petition for failure to show the company's viability and the feasibility of rehabilitation. The Regional Trial Court summarized Viva Shipping Lines' creditors and debts:[37]

Name of Creditor	Nature of Debts[38]	Amount of Obligation
(1) Batangas City	Real Estate Taxes	₱ 264,006.52
(2) Keppel Philippines Marine, Inc.	Charges for Repair of Vessels	20,054,977.84
(3) Metropolitan Bank & Trust Company	Loan secured by Real Estate Mortgage	191,963,465.79
(4) Pilipinas Shell Petroleum Corp.	Supply Agreement	20,546,797.74
(5) Luzviminda C. Cueto	Labor	232,000.00
	TOTAL	**₱233,061,247.89**

The Regional Trial Court also noted the following as Viva Shipping Lines' free assets:[39]

	Nature of Property	Assessed Value	Market Value
1	Agricultural/Industrial Lot in San Narciso, Quezon covered by TCT No. T-155423	₱ 16,493,050.00	40,000,000.00
2	Agricultural Lot located at San Andres, Quezon covered by TCT No. T-215549	1,235,010.00	47,630,000.00
3	MV Viva Peñafrancia 5		30,000,000.00
4	MV Marian Queen[40]		30,000,000.00
		TOTAL	**₱147,630,000.00**

[35] *Id*. at 17.

[36] *Id*. at 83-95.

[37] *Id*. at 89.

[38] *Id*. at 68.

[39] *Id*. at 93-94.

[40] According to Metropolitan Bank and Trust Company, this vessel is owned and registered in the name of Besta Shipping Lines as shown in the

The Regional Trial Court found that Viva Shipping Lines' assets all appeared to be non-performing. Further, it noted that Viva Shipping Lines failed to show any evidence of consent to sell real properties belonging to its sister company.[41]

Aggrieved, Viva Shipping Lines filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals.[42] It only impleaded Hon. Adolfo V. Encomienda, the Presiding Judge of the trial court that rendered the assailed decision. It did not implead any of its creditors, but served copies of the Petition on counsels for Metrobank, Keppel Philippines Marine, Inc., Pilipinas Shell, City of Batangas, Province of Quezon, and City of Lucena.[43] Viva Shipping Lines neither impleaded nor served a copy of the Petition on its former employees or their counsels.

The Court of Appeals dismissed Viva Shipping Lines' Petition for Review in the Resolution dated January 5, 2007.[44] It found that Viva Shipping Lines failed to comply with procedural requirements under Rule 43.[45] The Court of Appeals ruled that due to the failure of Viva Shipping Lines to implead its creditors as respondents, "there are no respondents who may be required to file a comment on the petition, pursuant to Section 8 of Rule 43."[46]

Viva Shipping Lines moved for reconsideration.[47] It argued that its procedural misstep was cured when it served copies of

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Certificate of Ownership No. 043172. The Certificate, however, was not included in Metropolitan Bank and Trust Company's submission.

[41] *Rollo*, p. 94, Regional Trial Court Order dated October 30, 2006.

[42] CA *rollo,* pp. 14-44, Petition for Review filed before the Court of Appeals.

[43] *Id*., Affidavit of Service dated December 7, 2006.

[44] *Rollo*, pp. 39-41, Court of Appeals Resolution dated January 5, 2007. The Resolution was penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa of the Fifth Division.

[45] *Id*. at 40.

[46] *Id*.

[47] CA *rollo*, pp. 267-277, Motion for Reconsideration.

the Petition on the Regional Trial Court and on its former employees.[48] In the Resolution dated March 30, 2007, the Court of Appeals denied Viva Shipping Lines' Motion for Reconsideration.[49]

Viva Shipping Lines filed before this court a Petition for Review on Certiorari assailing the January 5, 2007 and March 30, 2007 Court of Appeals Resolutions.[50] It prayed that the case be remanded to the Court of Appeals for adjudication on the merits.[51]

Without necessarily giving due course to the Petition, this court required respondents to comment.[52] Keppel Philippines Marine, Inc.,[53] Pilipinas Shell,[54] Metrobank,[55] former employees Alejandro Olit et al.,[56] the City of Batangas,[57] the City Treasurer of Lucena,[58] and the Provincial Treasurer of Quezon[59] filed their respective Comments.

On September 17, 2008,[60] December 10, 2008,[61] and July 20, 2009,[62] this court required Viva Shipping Lines to file replies

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[48] *Id*. at 278-279, Affidavits of Service to Hon. Judge Adolfo V. Encomienda of Branch 57 of the Regional Trial Court, Lucena City, and Alejandro Olit c/o Atty. Bonifacio Aranquez, Jr.

[49] *Rollo,* p. 42, Resolution dated March 30, 2007.

[50] *Id*. at 9-38, Petition for Review on *Certiorari*.

[51] *Id*. at 30.

[52] *Id*. at 142.

[53] *Id*. at 150-168.

[54] *Id*. at 185-235.

[55] *Id*. at 454-473.

[56] *Id*. at 479-485.

[57] *Id*. at 500-509.

[58] *Id*. at 513-516.

[59] *Id*. at 531-538.

[60] *Id*. at 511.

[61] *Id*. at 522.

[62] *Id*. at 543.

to respondents' comments. Viva Shipping Lines' counsel, Abesamis Law Office, withdrew its representation, which was accepted by this court.[63] Viva Shipping Lines was unable to file its consolidated reply; hence, this court resolved that Viva Shipping Lines' right to file a consolidated reply was deemed waived.[64]

On September 1, 2011, Atty. Vicente M. Joyas (Atty. Joyas) entered his appearance as Viva Shipping Lines' new counsel.[65] Atty. Joyas moved for several extensions of time to comply with this court's order to file a consolidated reply. This court allowed Atty. Joyas' Motions, and Viva Shipping Lines' consolidated reply was noted in our Resolution dated December 7, 2011.[66] This court then ordered the parties to submit their respective memoranda.[67]

Viva Shipping Lines, Inc.[68] and respondents Pilipinas Shell,[69] Keppel Philippines Marine, Inc.,[70] and Metrobank[71] submitted their respective memoranda. This court dispensed with the filing of the other respondents' memoranda.[72]

We resolve the following issues:

First, whether the Court of Appeals erred in dismissing petitioner Viva Shipping Lines' Petition for Review on procedural grounds; and

Second, whether petitioner was denied substantial justice when the Court of Appeals did not give due course to its petition.

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[63] *Id*. at 553.

[64] *Id*. at 566.

[65] *Id*. at 589.

[66] *Id*. at 617.

[67] *Id*. at 622.

[68] *Id*. at 720.

[69] *Id*. at 630.

[70] *Id*. at 677.

[71] *Id*. at 746.

[72] *Id*. at 798.

Petitioner argues that the Court of Appeals should have given due course to its Petition and excused its non-compliance with procedural rules.[73] For petitioner, the Interim Rules of Procedure on Corporate Rehabilitation mandates a liberal construction of procedural rules, which must prevail over the strict application of Rule 43 of the Rules of Court.[74]

According to petitioner, this court disfavors dismissals based on pure technicalities and adopts a policy stating that rules on appeal are "not iron-clad and must yield to loftier demands of substantial [j]ustice and equity."[75] For petitioner, the immediate dismissal of its Petition for Review is contrary to the purpose of corporate rehabilitation to rescue and rehabilitate financially distressed companies.[76]

Respondents, on the other hand, argue that the dismissal of petitioner's Petition for Review was proper for its failure to implead any of its creditors. Petitioner's procedural misstep resulted in the denial of the creditors' right to due process as they could not file a comment on the Petition.[77] Respondent Pilipinas Shell points out that petitioner did not even try to explain why it failed to implead its creditors in its Petition.[78]

Respondents cite Rule 43, Section 7, which states that non-compliance with any of the requirements of proof of service of the Petition, and the required contents, shall be sufficient ground for the dismissal of the Petition.[79] Compliance with Rule 43 is required under the Interim Rules of Procedure on Corporate Rehabilitation because it is the prescribed mode of appealing

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[73] *Id*. at 724.

[74] *Id*. at 724-727.

[75] *Id*. at 724-725, petitioner's Memorandum, *citing Remulla v. Manlongat,* 484 Phil. 832 (2004) [Per *J*. Panganiban, Third Division].

[76] *Id*. at 726.

[77] *Id*. at 686, 760 and 643.

[78] *Id*. at 648.

[79] *Id*. at 479-480, 687-688 and 750.

trial court decisions and final orders in corporate rehabilitation cases.[80] According to respondent Metrobank, contrary to the views of petitioner, the policy of liberality in construction of the Interim Rules of Procedure on Corporate Rehabilitation are limited to proceedings in the Regional Trial Court, and not with respect to procedural rules in elevating appeals relating to corporate rehabilitation.[81]

Respondents note that because petitioner repeatedly defied procedural rules, it therefore was no longer entitled to the relaxation of these rules.[82] Respondent Pilipinas Shell also points out the defects in the verification, certification of non-forum shopping, and attachments of petitioner in its Petition before this court.[83]

Respondent City of Batangas emphasizes that the Rules of Court are promulgated to facilitate the adjudication of cases. It argues that petitioner should not be afforded equitable considerations as it acted in bad faith by concealing material information during the rehabilitation proceedings.[84]

Respondents further argue that even if the Court of Appeals gave due course to the Petition, it would still have dismissed the case on the merits. Respondents cite petitioner's failure to provide material facts with sufficient particularity in its Amended Petition for Corporate Rehabilitation.[85] Petitioner also failed to disclose some of its creditors, as well as the several pending cases relating to its financial liabilities.[86] It failed to describe with specificity the cause of its inability to pay its debts.[87] It

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[80] *Id*. at 504-505.

[81] *Id*. at 758-760.

[82] *Id*. at 757, 648-649.

[83] *Id*. at 658-663.

[84] *Id*. at 500-501.

[85] *Id*. at 690, 532 and 787.

[86] *Id*. at 761, 637-638 and 651.

[87] *Id*. at 651.

also failed to clarify which vessels were still under its ownership, and which vessels had maritime liens.[88] Petitioner merely estimated its liabilities against its creditors.[89] Respondents also allege that petitioner nominated rehabilitators who are professionally connected with its counsel despite the existence of conflict of interest.[90]

Respondents point out that petitioner's admission that almost all its vessels are rendered unserviceable suggests that rehabilitation is no longer viable.[91] Former employees also mention that despite petitioner's desire to rehabilitate, after the Regional Trial Court's final order, petitioner began disposing of some of its assets.[92] Respondents also cannot rely on the plan to sell some of petitioner's sister company's properties. They also express doubts regarding petitioner's plan of converting its mall to a hotel/restaurant because it had no such experience. Respondents thus characterize Viva Shipping Lines' rehabilitation plan as "unrealistic, untested, and improbable."[93]

We deny the Petition.

I

Corporate rehabilitation is a remedy for corporations, partnerships, and associations "who [foresee] the impossibility of meeting [their] debts when they respectively fall due."[94] A corporation under rehabilitation continues with its corporate life and activities to achieve solvency,[95] or a position where the

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[88] *Id*. at 692-693, 762-763.

[89] *Id*. at 694.

[90] *Id*. at 656-658.

[91] *Id*. at 691.

[92] *Id*. at 482, 486-487.

[93] *Id*. at 652.

[94] INTERIM CORP. REHAB. RULE, Rule 4, Sec. 1.

[95] *Ruby Industrial Corporation v. Court of Appeals*, 348 Phil. 480, 497 (1998) [Per *J.* Puno, Second Division].

corporation is able to pay its obligations as they fall due in the ordinary course of business. Solvency is a state where the businesses' liabilities are less than its assets.[96]

Corporate rehabilitation is a type of proceeding available to a business that is insolvent. In general, insolvency proceedings provide for predictability that commercial obligations will be met despite business downturns. Stability in the economy results when there is assurance to the investing public that obligations will be reasonably paid. It is considered state policy

> to encourage debtors, both juridical and natural persons, and their creditors to *collectively and realistically resolve* and adjust competing claims and property rights[.] . . . [R]ehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtors' assets and the settlement of their obligations.[97] (Emphasis supplied)

The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because "assets . . . are often more valuable when so maintained than they would be when liquidated."[98] Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors

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[96] Rep. Act. No. 10142 (2010), Sec. 4(p) defines solvency as: "the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets." This definition is derived from the definition of insolvency under the Financial Rehabilitation and Insolvency Act.

[97] Rep. Act No. 10142 (2010), Sec. 2.

[98] *Bank of the Philippine Islands v. Securities and Exchange Commission*, 565 Phil. 588, 595–596 (2007) [Per *J.* Tinga, *En Banc*].

to be paid equitably. These interests are also referred to as the *rehabilitative* and the *equitable* purposes of corporate rehabilitation.[99]

The nature of corporate rehabilitation was thoroughly discussed in *Pryce Corporation v. China Banking Corporation*:[100]

> Corporate rehabilitation is one of many statutorily provided remedies for businesses that experience a downturn. Rather than leave the various creditors unprotected, legislation now provides for an orderly procedure of equitably and fairly addressing their concerns. Corporate rehabilitation allows a court-supervised process to rejuvenate a corporation. . . . It provides a corporation's owners a sound chance to re-engage the market, hopefully with more vigor and enlightened services, having learned from a painful experience.
>
> Necessarily, a business in the red and about to incur tremendous losses may not be able to pay all its creditors. Rather than leave it to the strongest or most resourceful amongst all of them, the state steps in to equitably distribute the corporation's limited resources.
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> . . . .
>
> Rather than let struggling corporations slip and vanish, the better option is to allow commercial courts to come in and apply the process for corporate rehabilitation.[101]

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation[102] reiterates that courts "must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors."[103] These parties

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[99] *Id*. at 595.

[100] G.R. No. 172302, February 18, 2014, 716 SCRA 207 [Per *J*. Leonen, *En Banc*].

[101] *Id*. at 233-234.

[102] G.R. No. 187581, October 20, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/187581.pdf> [Per *J*. Bersamin, First Division].

[103] *Id*. at 10.

include the corporation seeking rehabilitation, its creditors, and the public in general.[104]

The public's interest lies in the court's ability to effectively ensure that the obligations of the debtor, who has experienced severe economic difficulties, are fairly and equitably served. The alternative might be a chaotic rush by all creditors to file separate cases with the possibility of different trial courts issuing various writs competing for the same assets. Rehabilitation is a means to temper the effect of a business downturn experienced for whatever reason. In the process, it gives entrepreneurs a second chance. Not only is it a humane and equitable relief, it encourages efficiency and maximizes welfare in the economy.

Clearly then, there are instances when corporate rehabilitation can no longer be achieved. When rehabilitation will not result in a better present value recovery for the creditors,[105] the more appropriate remedy is liquidation.[106]

It does not make sense to hold, suspend, or continue to devalue outstanding credits of a business that has no chance of recovery. In such cases, the optimum economic welfare will be achieved if the corporation is allowed to wind up its affairs in an orderly manner. Liquidation allows the corporation to wind up its affairs and equitably distribute its assets among its creditors.[107]

Liquidation is diametrically opposed to rehabilitation. Both cannot be undertaken at the same time.[108] In rehabilitation, corporations have to maintain their assets to continue business operations. In liquidation, on the other hand, corporations preserve

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[104] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, G.R. No. 175844, July 29, 2013, 702 SCRA 432 [Per *J.* Perlas-Bernabe, Second Division].

[105] *Umale v. ASB Realty Corporation,* 667 Phil. 351 (2011) [Per *J.* Del Castillo, First Division].

[106] 2 STEPHANIE V. GOMEZ-SOMERA, *CREDIT TRANSACTIONS: NOTES AND CASES* 862 (2011).

[107] *Philippine Veterans Bank Employees Union-NUBE v. Vega,* 412 Phil. 449 (2001) [Per *J.* Kapunan, First Division].

[108] *Id.*

their assets in order to sell them. Without these assets, business operations are effectively discontinued. The proceeds of the sale are distributed equitably among creditors, and surplus is divided or losses are re-allocated.[109]

Proceedings in case of insolvency are not limited to rehabilitation. Our laws have evolved to provide for different procedures where a debtor can undergo judicially supervised reorganization or liquidation of its assets.[110]

Corporate rehabilitation traces its roots to Act No. 1956, otherwise known as the Insolvency Law of 1909. Under the Insolvency Law, a debtor in possession of sufficient properties to cover all its debts but foresees the impossibility of meeting them when they fall due may file a petition before the court to be declared in a state of suspension of payments.[111] This allows time for the debtor to organize its affairs in order to achieve a state where it can comply with its obligations.

The relief was also provided in the amendatory provisions of Presidential Decree No. 902-A. Section 5 of Presidential Decree No. 902-A states that the Securities and Exchange Commission has jurisdiction to decide:

> d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association *possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due* or in cases where the corporation, partnership or association has *no sufficient assets to cover its liabilities*, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.[112] (Emphasis supplied).

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[109] 2 Stephanie V. Gomez-Somera, *Credit Transactions; Notes and Cases* 926 (2015).

[110] 2 Stephanie V. Gomez-Somera, *Credit Transactions; Notes and Cases* 737 (2015).

[111] Act No. 1956 (1909), Sec. 2.

[112] Pres. Decree No. 902-A (1976), Sec. 5(d), as amended by Pres. Decree No. 1758.

In 2000, the jurisdiction of the Securities and Exchange Commission over these cases was transferred to the Regional Trial Court,[113] by operation of Section 5.2 of the Securities Regulation Code.[114] In the same year, this court approved the Interim Rules of Procedure on Corporate Rehabilitation. The Interim Rules of Procedure on Corporate Rehabilitation provides a summary and non-adversarial proceeding to expedite the resolution of cases for the benefit of the corporation in need of rehabilitation, its creditors, and the public in general.[115]

Currently, the prevailing law and procedure for corporate rehabilitation is the Financial Rehabilitation and Insolvency Act of 2010 (FRIA).[116] FRIA provides procedures for the different types of rehabilitation and liquidation proceedings. The Financial Rehabilitation Rules of Procedure was issued by this court on August 27, 2013.[117]

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[113] Since 2000, this court has designated different branches of several multi-sala Regional Trial Courts as "Special Commercial Courts" to resolve cases that were originally under the jurisdiction of the Securities and Exchange Commission. In *Gonzales v. GJH Land, Inc.*, G.R. No. 202664, November 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/202664.pdf> [Per *J.* Perlas-Bernabe, *En Banc*], we clarified that it is the Regional Trial Court that has subject-matter jurisdiction over these commercial cases, and it is an exercise of jurisdiction to refer these cases to the branches designated as Special Commercial Courts for their speedy and efficient disposition.

[114] Rep. Act No. 8799, Sec. 5.2 provides:

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided,* That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

[115] *New Frontier Sugar Corp. v. Regional Trial Court, Branch 39, Iloilo City*, 542 Phil. 587, 595 (2007) [Per *J.* Austria-Martinez, Third Division].

[116] Rep. Act No. 10142 (2010).

[117] A.M. No. 12-12-11-SC, Resolution dated April 27, 2013.

However, since the Regional Trial Court acted on petitioner's Amended Petition before FRIA was enacted, Presidential Decree No. 902-A and the Interim Rules of Procedure on Corporate Rehabilitation were applied to this case.[118]

II

The controversy in this case arose from petitioner's failure to comply with appellate procedural rules in corporate rehabilitation cases. Petitioner now pleads this court to apply the policy of liberality in constructing the rules of procedure.[119]

We observe that during the corporate rehabilitation proceedings, the Regional Trial Court already exercised the liberality contemplated by the Interim Rules of Procedure on Corporate Rehabilitation. The Regional Trial Court initially dismissed Viva Shipping Lines' Petition but allowed the filing of an amended petition. Later on, the same court issued a stay order when there were sufficient grounds to believe that the Amended Petition complied with Rule 4, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation. Petitioner was not penalized for its non-compliance with the court's order to produce relevant documents or for its non-submission of a memorandum.[120]

Even with these accommodations, the trial court still found basis to dismiss the plea for rehabilitation.

Any final order or decision of the Regional Trial Court may be subject of an appeal.[121] In *Re: Mode of Appeal in Cases*

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[118] Rep. Act No. 10142 (2010), Sec. 146 provides:

SEC. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases.* — This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

[119] INTERIM CORP. REHAB. RULE, Rule 2, Sec. 2.

[120] A memorandum, however, is a prohibited pleading under the Interim Rules of Procedure on Corporate Rehabilitation.

[121] INTERIM CORP. REHAB. RULE, Rule 3, Sec. 5.

Formerly Cognizable by the Securities and Exchange Commission,[122] this court clarified that all decisions and final orders falling under the Interim Rules of Procedure on Corporate Rehabilitation shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.[123]

New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City[124] clarifies that an appeal from a final order or decision in corporate rehabilitation proceedings may be dismissed for being filed under the wrong mode of appeal.[125]

New Frontier Sugar doctrinally requires compliance with the procedural rules for appealing corporate rehabilitation decisions. It is true that Rule 1, Section 6 of the Rules of Court provides that the "[r]ules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." However, this provision does not negate the entire Rules of Court by providing a license to disregard all the other provisions. Resort to liberal construction must be rational and well-grounded, and its factual bases must be so clear such that they outweigh the intent or purpose of an apparent reading of the rules.

Rule 43 prescribes the mode of appeal for corporate rehabilitation cases:

> Sec. 5. *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, *with proof of service of a copy thereof on the adverse party and on the court or agency a quo.* The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
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> . . . .

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[122] A.M. No. 04-9-07-SC, Resolution dated September 14, 2004.

[123] A.M. No. 04-9-07-SC, Resolution dated September 14, 2004, par. 1.

[124] 542 Phil. 587 (2007) [Per *J.* Austria-Martinez, Third Division].

[125] *Id.* at 597-598.

Sec. 6. *Contents of the petition.* — The petition for review shall *(a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents;* (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)

Petitioner did not comply with some of these requirements. First, it did not implead its creditors as respondents. Instead, petitioner only impleaded the Presiding Judge of the Regional Trial Court, contrary to Section 6(a) of Rule 43. Second, it did not serve a copy of the Petition on some of its creditors, specifically, its former employees. Finally, it did not serve a copy of the Petition on the Regional Trial Court.

Petitioner justified its failure to furnish its former employees with copies of the Petition by stating that the former employees were late in filing their opposition before the trial court.[126] It also stated that its failure to furnish the Regional Trial Court with a copy of the Petition was unintentional.[127]

The Court of Appeals correctly dismissed petitioner's Rule 43 Petition as a consequence of non-compliance with procedural rules. Rule 43, Section 7 of the Rules of Court states:

Sec. 7. *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit of costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

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[126] *Rollo,* p. 29, Petition for Review on *Certiorari*.

[127] *Id.* at 725, Viva Shipping Lines' Memorandum.

Petitioner admitted its failure to comply with the rules. It begs the indulgence of the court to give due course to its Petition based on their belated compliance with some of these procedural rules and the policy on the liberal construction of procedural rules.

There are two kinds of "liberality" with respect to the construction of provisions of law. The first requires ambiguity in the text of the provision and usually pertains to a situation where there can be two or more viable meanings given the factual context presented by a case. Liberality here means a presumption or predilection to interpret the text in favor of the cause of the party requesting for "liberality."

Then there is the "liberality" that actually means a request for the suspension of the operation of a provision of law, whether substantive or procedural. This liberality requires equity. There may be some rights that are not recognized in law, and if courts refuse to recognize these rights, an unfair situation may arise.[128] Specifically, the case may be a situation that was not contemplated on or was not possible at the time the legal norm was drafted or promulgated.

It is in the second sense that petitioner pleads this court.

III

Our courts are not only courts of law, but are also courts of equity.[129] Equity is justice outside legal provisions, and must be exercised in the *absence* of law, not against it.[130] In *Reyes v. Lim*:[131]

> Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory

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[128] See *Insurance of the Philippine Islands Corp. v. Spouses Gregorio*, 658 Phil. 36 (2011) [Per *J.* Peralta, Second Division].

[129] *Rustia v. Franco*, 41 Phil. 280, 284 (1920) [Per *J.* Street, *En Banc*].

[130] *GF Equity, Inc. v. Valenzona,* 501 Phil. 153, 166 (2005) [Per *J.* Carpio-Morales, Third Division].

[131] *Reyes v. Lim*, 456 Phil. 1 (2003) [Per *J.* Carpio, First Division].

or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[132] (Citation omitted)

Liberality lies within the bounded discretion of a court to allow an equitable result when the proven circumstances require it. Liberality acknowledges a lacuna in the text of a provision of law. This may be because those who promulgated the rule may not have foreseen the unique circumstances of a case at bar. Human foresight as laws and rules are prepared is powerful, but not perfect.

Liberality is not an end in itself. Otherwise, it becomes a backdoor disguising the arbitrariness or despotism of judges and justices. In *North Bulacan Corp. v. PBCom,*[133] the Regional Trial Court ignored several procedural rules violated by the petitioning corporation and allowed rehabilitation in the guise of liberality. This court found that the Regional Trial Court grossly abused its authority when it allowed rehabilitation despite the corporation's blatant non-compliance with the rules.

The factual antecedents of a plea for the exercise of liberality must be clear. There must also be a showing that the factual basis for a plea for liberality is not one that is due to the negligence or design of the party requesting the suspension of the rules. Likewise, the basis for claiming an equitable result—for all the parties—must be clearly and sufficiently pleaded and argued. Courts exercise liberality in line with their equity jurisdiction; hence, it may only be exercised if it will result in fairness and justice.

IV

The first rule breached by petitioner is the failure to implead all the indispensable parties. Petitioner did not even interpose reasons why it should be excused from compliance with the rule to "state the full names of the parties to the case, without

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[132] *Id*. at 10.

[133] 640 Phil. 301 (2010) [Per *J.* Abad, Second Division].

impleading the court . . . as . . . respondents." Petitioner did exactly the opposite. It failed to state the full names of its creditors as respondents. Instead, it impleaded the Presiding Judge of the originating court.

The Rules of Court requires petitioner to implead respondents as a matter of due process. Under the Constitution, "[n]o person shall be deprived of life, liberty or property without due process of the law."[134] An appeal to a corporate rehabilitation case may deprive creditor-stakeholders of property. Due process dictates that these creditors be impleaded to give them an opportunity to protect the property owed to them.

Creditors are indispensable parties to a rehabilitation case, even if a rehabilitation case is non-adversarial. In *Boston Equity Resources, Inc. v. Court of Appeals*:[135]

> An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but "an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable." Further, an indispensable party is one who must be included in an action before it may properly proceed.[136]

A corporate rehabilitation case cannot be decided without the creditors' participation. The court's role is to balance the

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[134] CONST., Art. III, Sec. 1.

[135] *Boston Equity Resources, Inc. v. Court of Appeals,* G.R. No. 173946, June 19, 2013, 699 SCRA 16 [Per *J.* Perez, Second Division].

[136] *Id*. at 34, *citing Lagunilla, et al. v. Velasco, et al.*, 607 Phil. 194, 205 (2009) [Per *J.* Nachura, Third Division], *in turn citing Regner v. Logarta*, 562 Phil. 862 (2007) [Per *J.* Chico-Nazario, Third Division] and *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997) [Per *J.* Panganiban, Third Division].

interests of the corporation, the creditors, and the general public. Impleading creditors as respondents on appeal will give them the opportunity to present their legal arguments before the appellate court. The courts will not be able to balance these interests if the creditors are not parties to a case. Ruling on petitioner's appeal in the absence of its creditors will not result in judgment that is effective, complete, and equitable.

This court cannot exercise its equity jurisdiction and allow petitioner to circumvent the requirement to implead its creditors as respondents. Tolerance of such failure will not only be unfair to the creditors, it is contrary to the goals of corporate rehabilitation, and will invalidate the cardinal principle of due process of law.

The failure of petitioner to implead its creditors as respondents cannot be cured by serving copies of the Petition on its creditors. Since the creditors were not impleaded as respondents, the copy of the Petition only serves to inform them that a petition has been filed before the appellate court. Their participation was still significantly truncated. Petitioner's failure to implead them deprived them of a fair hearing. The appellate court only serves court orders and processes on parties formally named and identified by the petitioner. Since the creditors were not named as respondents, they could not receive court orders prompting them to file remedies to protect their property rights.

The next procedural rule that petitioner pleaded to suspend is the rule requiring it to furnish all parties with copies of the Rule 43 Petition. Petitioner admitted its failure to furnish its former employees with copies of the Petition because they belatedly filed their claims before the Regional Trial Court.

This argument is specious at best; at worst, it foists a fraud on this court. The former employees were unable to raise their claims on time because petitioner did not declare them as creditors. The Amended Petition did not contain any information regarding pending litigation between petitioner and its former employees. The only way the former employees could become aware of the corporate rehabilitation proceedings was either through the required publication or through news informally circulated among

their colleagues. Clearly, it was petitioner who caused the belated filing of its former employees' claims when it failed to notify its employees of the corporate rehabilitation proceedings. Petitioner's failure was conveniently and disreputably hidden from this court.

Former employee Luzviminda C. Cueto filed her Manifestation and Registration of Monetary Claim as early as November 25, 2005. Alejandro Olit, et al., the other employees, filed their Comment on September 27, 2006. By the time petitioner filed its Petition for Review dated November 21, 2006 before the Court of Appeals, it was well aware that these individuals had expressed their interest in the corporate rehabilitation proceedings. Petitioner and its counsel had no excuse to exclude these former employees as respondents on appeal.

Petitioner's belated compliance with the requirement to serve the Petition for Review on its former employees did not cure the procedural lapse. There were two sets of employees with claims against petitioner: Luzviminda C. Cueto and Alejandro Olit, et al. When the Court of Appeals dismissed petitioner's appeal, petitioner only served a copy on Alejandro Olit, et al. Petitioner still did not serve a copy on Luzviminda C. Cueto.

We do not see how it will be in the interest of justice to allow a petition that fails to inform some of its creditors that the final order of the corporate rehabilitation proceeding was appealed. By not declaring its former employees as creditors in the Amended Petition for Corporate Rehabilitation and by not notifying the same employees that an appeal had been filed, petitioner consistently denied the due process rights of these employees.

This court cannot be a party to the inequitable way that petitioner's employees were treated.

Petitioner also pleaded to be excused from the requirement under Rule 6, Section 5 of the Rules of Court to serve a copy of the Petition on the originating court. According to petitioner, the annexes for the Petition for Review filed before the Court of Appeals arrived from Lucena City on the last day of filing the petition. Petitioner's representative from Lucena City and

petitioner's counsel rushed to compile and reproduce all the documents, and in such rush, failed to send a copy to the Regional Trial Court. When petitioner realized that it failed to furnish the originating court with a copy of the Petition, a copy was immediately sent by registered mail.[137]

Again, petitioner's excuse is unacceptable. Petitioner had 15 days to file a Rule 43 petition, which should include the proof of service to the originating court. Rushing the compilation of the pleading with the annexes has nothing to do with being able to comply with the requirement to submit a proof of service of the copy of the petition for review to the originating court. If at all, it further reflects the unprofessional way that petitioner and its counsel treated our rules.

As this court has consistently ruled, "[t]he right to appeal is not a natural right[,] nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."[138]

In line with this, liberality in corporate rehabilitation procedure only generally refers to the trial court, not to the proceedings before the appellate court. The Interim Rules of Procedure on Corporate Rehabilitation covers petitions for rehabilitation filed before the Regional Trial Court. Thus, Rule 2, Section 2 of the Interim Rules of Procedure on Corporate Rehabilitation, which refers to liberal construction, is limited to the Regional Trial Court. The liberality was given "to assist the parties in obtaining a just, expeditious, and inexpensive disposition of the case."[139]

In *Spouses Ortiz v. Court of Appeals,*[140] the petitioners made a procedural mistake with the attachments of the petition before

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[137] *Rollo,* pp. 25-26, Petition for Review on *Certiorari*.

[138] *Bello v. Fernando*, 114 Phil. 101, 103 (1962) [Per *J*. Reyes, J.B.L., *En Banc*], *citing Aguila v. Navarro,* 55 Phil. 898 (1931) [Per *J*. Villamor, Second Division] and *Santiago v. Valenzuela,* 78 Phil. 397 (1947) [Per *J*. Feria, *En Banc*].

[139] INTERIM CORP. REHAB. RULE, Rule 2, Sec. 2.

[140] 360 Phil. 95 (1998) [Per *J*. Quisumbing, First Division].

the Court of Appeals. The petitioners subsequently provided the correct attachments; however, this court still upheld the Court of Appeals' dismissal:

> The party who seeks to avail [itself] of [an appeal] must comply with the requirements of the rules. Failing to do so, the right to appeal is lost. Rules of procedure are required to be followed, except only when for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[141]

Petitioner's excuses do not trigger the application of the policy of liberality in construing procedural rules. For the courts to exercise liberality, petitioner must show that it is suffering from an injustice not commensurate to the thoughtlessness of its procedural mistakes. Not only did petitioner exercise injustice towards its creditors, its Rule 43 Petition for Review did not show that the Regional Trial Court erred in dismissing its Amended Petition for Corporate Rehabilitation.

V

Petitioner's main argument for the continuation of corporate rehabilitation proceedings is that the Regional Trial Court should have allowed petitioner to clarify its Amended Petition with respect to details regarding its assets and its liabilities to its creditors instead of dismissing the Petition outright.[142]

The Regional Trial Court correctly dismissed the Amended Petition for Corporate Rehabilitation. The dismissal of the Amended Petition did not emanate from petitioner's failure to provide complete details on its assets and liabilities but on the trial court's finding that rehabilitation is no longer viable for petitioner. Under the Interim Rules of Procedure on Corporate Rehabilitation, a "petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred

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[141] *Id.* at 101.

[142] CA *rollo,* p. 31, Petition for Review.

eighty (180) days from the date of the initial hearing."[143] The proceedings are also deemed terminated upon the trial court's disapproval of a rehabilitation plan, "or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions."[144]

Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.[145] provides the test to help trial courts evaluate the economic feasibility of a rehabilitation plan:

> In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that *a thorough examination and analysis of the distressed corporation's financial data* must be conducted. If the results of such examination and analysis show that there is *a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated* in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. *On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible.* In such case, the rehabilitation court may convert the proceedings into one for liquidation.[146] (Emphasis supplied)

Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:

> a. The debtor has assets that can generate more cash if used in its daily operations than if sold.

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[143] Interim Corp. Rehab. Rule, Rule 4, Sec. 11.

[144] Interim Corp. Rehab. Rule, Rule 4, Sec. 27.

[145] G.R. No. 175844, July 29, 2013, 702 SCRA 432 [Per *J.* Perlas-Bernabe, Second Division].

[146] *Id.* at 447-448.

b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.

c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.[147] (Emhasis supplied)

These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

(a) the absence of a sound and workable business plan;

(b) baseless and unexplained assumptions, targets and goals;

(c) speculative capital infusion or complete lack thereof for the execution of the business plan;

(d) cash flow cannot sustain daily operations; and

(e) negative net worth and the assets are near full depreciation or fully depreciated.[148]

In addition to the tests of *economic feasibility*, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better *present value recovery* for its creditors.[149]

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[147] 2 STEPHANIE V. GOMEZ-SOMERA, *CREDIT TRANSACTIONS; NOTES AND CASES* 797-798 (2015).

[148] *Wonder Book Corp. v. Philippine Bank of Communications,* G.R. No. 187316, 691 Phil. 83, 95 (2012) [Per *J.* Reyes, Second Division].

[149] Rep. Act No. 10142 (2010), Sec. 4(gg) defines rehabilitation as: "the restoration of the debtor to a condition of successful operation and solvency,

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future.[150] It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.[151]

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.

The Regional Trial Court correctly dismissed petitioner's rehabilitation plan. It found that petitioner's assets are non-performing.[152] Petitioner admitted this in its Amended Petition

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if it is shown that its continuance of operation is economically feasible and its creditors *can recover by way of the present value of payments* projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated." This is because if rehabilitation is still viable, creditors may still be able to recover the full value of the credit. If the assets are immediately liquidated even when rehabilitation is viable, creditors run the risk of sharing in the losses of the corporation, especially if the book value of its assets is less than its outstanding credits.

[150] *J.* Leonen, Dissenting Opinion in *Secretary of the Department of Public Works and Highways v. Spouses Tecson* (Resolution), G.R. No. 179334, April 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/179334_leonen.pdf> [Per *J.* Peralta, *En Banc*].

[151] See *Heirs of Tria v. Land Bank of the Philippines*, G.R. No. 170245, July 1, 2013, 700 SCRA 188 [Per *J.* Peralta, Third Division].

[152] *Rollo*, p. 94, Regional Trial Court Order dated October 30, 2006.

when it stated that its vessels were no longer serviceable.[153] In *Wonder Book Corporation v. Philippine Bank of Communications,*[154] a rehabilitation plan is infeasible if the assets are nearly fully or fully depreciated. This reduces the probability that rehabilitation may restore and reinstate petitioner to its former position of successful operation and solvency.

Petitioner's rehabilitation plan should have shown that petitioner has enough serviceable assets to be able to continue its business. Yet, the plan showed that the source of funding would be to sell petitioner's old vessels. Disposing of the assets constituting petitioner's main business cannot result in rehabilitation. A business primarily engaged as a *shipping* line cannot operate without its ships. On the other hand, the plan to purchase new vessels sacrifices the corporation's cash flow. This is contrary to the goal of corporate rehabilitation, which is to allow present value recovery for creditors. The plan to buy new vessels after selling the two vessels it currently owns is neither sound nor workable as a business plan.

The other part of the rehabilitation plan entails selling properties of petitioner's sister company. As pointed out by the Regional Trial Court, this plan requires conformity from the sister company. Even if the two companies have the same directorship and ownership, they are still two separate juridical entities. In *BPI Family Savings Bank v. St. Michael Medical Center*,[155] this court refused to include in the financial and liquidity assessment the financial statements of another corporation that the petitioning-corporation plans to merge with.

As pointed out by respondents, petitioner's rehabilitation plan is almost impossible to implement. Even an ordinary individual with no business acumen can discern the groundlessness of

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[153] *Id*. at 50, Amended Petition.

[154] G.R. No. 187316, 691 Phil. 83 (2012) [Per *J*. Reyes, Second Division].

[155] G.R. No. 205469, March 25, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/205469.pdf> [Per *J.* Perlas-Bernabe, First Division].

petitioner's rehabilitation plan. Petitioner should have presented a more realistic and practicable rehabilitation plan within the time periods allotted after initiatory hearing, or otherwise, should have opted for liquidation.

Finally, petitioner argues that after Judge Mendoza's withdrawal as rehabilitation receiver, the Regional Trial Court should have appointed a new rehabilitation receiver to evaluate the rehabilitation plan. We rule otherwise. It is not solely the responsibility of the rehabilitation receiver to determine the validity of the rehabilitation plan. The Interim Rules of Procedure on Corporate Rehabilitation allows the trial court to disapprove a rehabilitation plan[156] and terminate proceedings or, should the instances warrant, to allow modifications to a rehabilitation plan.[157]

The Regional Trial Court rendered a decision in accordance with facts and law. Thus, we deny the plea for liberalization of procedural rules. To grant the plea would cause more economic hardship and injustice to all those concerned.

WHEREFORE, the Petition is **DENIED.** The Court of Appeals Resolutions dated January 7, 2007 and March 30, 2007 in CA-G.R. SP No. 96974 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

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[156] INTERIM CORP. REHAB. RULE, Rule 4, Sec. 27.

[157] INTERIM CORP. REHAB. RULE, Rule 4, Sec. 11.

THIRD DIVISION

[G.R. No. 184332. February 17, 2016]

ANNA TENG, *petitioner, vs.* **SECURITIES AND EXCHANGE COMMISSION (SEC) and TING PING LAY,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; CERTIFICATE OF STOCK EVINCING SHARES OF STOCK; DISCUSSED.—** A certificate of stock is a written instrument signed by the proper officer of a corporation stating or acknowledging that the person named in the document is the owner of a designated number of shares of its stock. It is *prima facie* evidence that the holder is a shareholder of a corporation. A certificate, however, is merely a tangible evidence of ownership of shares of stock. It is not a stock in the corporation and merely expresses the contract between the corporation and the stockholder. The shares of stock evidenced by said certificates, meanwhile, are regarded as property and the owner of such shares may, as a general rule, dispose of them as he sees fit, unless the corporation has been dissolved, or unless the right to do so is properly restricted, or the owner's privilege of disposing of his shares has been hampered by his own action.

2. **ID.; ID.; CERTIFICATE OF STOCK AND TRANSFER OF SHARES; REQUISITES; IT IS THE DELIVERY OF THE CERTIFICATE, COUPLED WITH THE ENDORSEMENT BY THE OWNER OR HIS DULY AUTHORIZED REPRESENTATIVE THAT IS THE OPERATIVE ACT OF TRANSFER OF SHARES FROM THE ORIGINAL OWNER TO THE TRANSFEREE.—** Section 63 of the Corporation Code prescribes the manner by which a share of stock may be transferred. x x x Under the provision, certain minimum requisites must be complied with for there to be a valid transfer of stocks, to wit: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the

corporation. It is the delivery of the certificate, coupled with the endorsement by the owner or his duly authorized representative that is the operative act of transfer of shares from the original owner to the transferee. x x x The only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred. In *Rural Bank of Salinas,* the Court ruled that the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. x x x If a corporation refuses to make such transfer without good cause, it may, in fact, even be compelled to do so by *mandamus.*

3. **ID.; ID.; ID.; ID.; TO BE VALID AGAINST THIRD PARTIES AND THE CORPORATION, THE TRANSFER MUST BE RECORDED IN THE BOOKS OF THE CORPORATION.—** [T]o be valid against third parties and the corporation, the transfer must be recorded or registered in the books of the corporation. There are several reasons why registration of the transfer is necessary: one, to enable the transferee to exercise all the rights of a stockholder; two, to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder; and three, to avoid fictitious or fraudulent transfers, among others. x x x Upon registration of the transfer in the books of the corporation, the transferee may now then exercise all the rights of a stockholder, which include the right to have stocks transferred to his name. x x x [T]he stock and transfer book is the basis for ascertaining the persons entitled to the rights and subject to the liabilities of a stockholder. Where a transferee is not yet recognized as a stockholder, the corporation is under no specific legal duty to issue stock certificates in the transferee's name."

4. **ID.; ID.; ID.; SURRENDER OF THE ORIGINAL CERTIFICATE OF STOCK IS NECESSARY BEFORE THE ISSUANCE OF A NEW ONE SO THAT THE OLD CERTIFICATE MAY BE CANCELLED.—** [Under Section 47 of the Corporation Code,] the manner of issuance of certificates of stock is generally regulated by the corporation's by-laws. x x x In *Bitong v. CA,* the Court outlined the procedure for the issuance of new certificates of stock in the name of a transferee: *First,* the certificates must be signed by the president

or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. x x x *Second,* delivery of the certificate is an essential element of its issuance. x x x *Third,* the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. ***Fourth,* the original certificate must be surrendered where the person requesting the issuance of a certificate is a transferee from a stockholder.** The surrender of the original certificate of stock is necessary before the issuance of a new one so that the old certificate may be cancelled. A corporation is not bound and cannot be required to issue a new certificate unless the original certificate is produced and surrendered. Surrender and cancellation of the old certificates serve to protect not only the corporation but the legitimate shareholder and the public as well, as it ensures that there is only one document covering a particular share of stock.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for private respondent.

The Solicitor General for respondent Securities & Exchange Commission.

D E C I S I O N

REYES, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated April 29, 2008 and the Resolution[3] dated August 28, 2008 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 99836. The CA affirmed the orders of the Securities and Exchange Commission (SEC) granting the issuance of an *alias* writ of

[1] *Rollo,* pp. 9-39.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca De Guia-Salvador and Vicente S.E. Veloso concurring; *id.* at 41-50, 237-246.

[3] *Id.* at 52-53; 248-249.

execution, compelling petitioner Anna Teng (Teng) to register and issue new certificates of stock in favor of respondent Ting Ping Lay (Ting Ping).

The Facts

This case has its origin in G.R. No. 129777[4] entitled *TCL Sales Corporation and Anna Teng v. Hon. Court of Appeals and Ting Ping Lay*. Herein respondent Ting Ping purchased 480 shares of TCL Sales Corporation (TCL) from Peter Chiu (Chiu) on February 2, 1979; 1,400 shares on September 22, 1985 from his brother Teng Ching Lay (Teng Ching), who was also the president and operations manager of TCL; and 1,440 shares from Ismaelita Maluto (Maluto) on September 2, 1989.[5]

Upon Teng Ching's death in 1989, his son Henry Teng (Henry) took over the management of TCL. To protect his shareholdings with TCL, Ting Ping on August 31, 1989 requested TCL's Corporate Secretary, herein petitioner Teng, to enter the transfer in the Stock and Transfer Book of TCL for the proper recording of his acquisition. He also demanded the issuance of new certificates of stock in his favor. TCL and Teng, however, refused despite repeated demands. Because of their refusal, Ting Ping filed a petition for *mandamus* with the SEC against TCL and Teng, docketed as SEC Case No. 3900.[6]

In its Decision[7] dated July 20, I994, the SEC granted Ting Ping's petition, ordering as follows:

> WHEREFORE, in view of all the foregoing facts and circumstances, judgment is hereby rendered.
>
> A. Ordering [TCL and Teng] to record in the Books of the Corporation the following shares:
>
> 1. 480 shares acquired by [Ting Ping] from [Chiu] per Deed of Sales [sic] dated February 20, 1979;

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[4] 402 Phil. 37 (2001).

[5] *Id*. at 42.

[6] *Id*. at 42-43.

[7] Issued by Hearing Officer James K. Abugan; *rollo,* pp. 64-72.

2. 1,400 shares acquired by [Ting Ping] from [Teng Ching] per Deed of Sale dated September 22, 1985; and

3. 1,440 shares acquired by [Ting Ping] from [Maluto] per Deed of Assignment dated Sept. 2, 1989 [sic].

B. Ordering [TCL and Teng] to issue corresponding new certificates of stocks (sic) in the name of [Ting Ping].

C. Ordering [TCL and Teng] to pay [Ting Ping] moral damages in the amount of One Hundred Thousand (₱100,000.00) Pesos and Fifty Thousand (₱50,000.00) Pesos for attorney's fees.

SO ORDERED.[8]

TCL and Teng appealed to the SEG *en banc*, which, in its Order[9] dated June 11, 1996, affirmed the SEC decision with modification, in that Teng was held solely liable for the payment of moral damages and attorney's fees.

Not contented, TCL and Teng filed a petition for review with the CA, docketed as CA-GR. SP. No. 42035. On January 31, 1997, the CA, however, dismissed the petition for having been filed out of time and for finding no cogent and justifiable grounds to disturb the findings of the SEC *en banc.*[10] This prompted TCL and Teng to come to the Court *via* a petition for review on *certiorari* under Rule 45.

On January 5, 2001, the Court promulgated its Decision in G.R. No. 129777, the dispositive portion of which states:

WHEREFORE, the petition is *DENIED,* and the Decision dated January 31, 1997, as well as the Resolution dated July 3, 1997 of [the CA] are hereby *AFFIRMED.* Costs against [TCL and Teng].

SO ORDERED.[11]

After the finality of the Court's decision, the SEC issued a writ of execution addressed to the Sheriff of the Regional Trial

[8] *Id*. at 71-72.

[9] *Id*. at 73-79.

[10] *Supra* note 4, at 41-44.

[11] *Id*. at 50.

Court (RTC) of Manila. Teng, however, filed on February 4, 2004 a complaint for interpleader with the RTC of Manila, Branch 46, docketed as Civil Case No. 02-102776, where Teng sought to compel Henry and Ting Ping to interplead and settle the issue of ownership over the 1,400 shares, which were previously owned by Teng Ching. Thus, the deputized sheriff held in abeyance the further implementation of the writ of execution pending outcome of Civil Case No. 02-102776.[12]

On March 13, 2003, the RTC of Manila, Branch 46, rendered its Decision[13] in Civil Case No. 02-102776, finding Henry to have a better right to the shares of stock formerly owned by Teng Ching, except as to those covered by Stock Certificate No. 011 covering 262.5 shares, among others.[14]

Thereafter, an *Ex Parte* Motion for the Issuance of *Alias* Writ of Execution[15] was filed by Ting Ping where he sought the partial satisfaction of SEC *en banc* Order dated June 11, 1996 ordering TCL and Teng to record the 480 shares he acquired from Chiu and the 1,440 shares he acquired from Maluto, and for Teng's payment of the damages awarded in his favor.

Acting upon the motion, the SEC issued an Order[16] dated August 9, 2006 granting partial enforcement and satisfaction of the Decision dated July 20, 1994, as modified by the SEC *en banc's* Order dated June 11, 1996.[17] On the same date, the SEC issued an alias writ of execution.[18]

Teng and TCL filed their respective motions to quash the alias writ of execution,[19] which was opposed by Ting Ping,[20]

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[12] *Rollo,* p. 43.

[13] Issued by Judge Artemio S. Tipon; *id*. at 104-113.

[14] *Id*. at 112.

[15] *Id*. at 96-98.

[16] *Id*. at 116-122.

[17] *Id*. at 122.

[18] *Id*. at 123-128.

[19] *Id*. at 129-134; 135-141.

[20] *Id*. at 142-150.

who also expressed his willingness to surrender the original stock certificates of Chiu and Maluto to facilitate and expedite the transfer of the shares in his favor. Teng pointed out, however, that the annexes in Ting Ping's opposition did not include the subject certificates of stock, surmising that they could have been lost or destroyed.[21] Ting Ping belied this, claiming that his counsel Atty. Simon V. Lao already communicated with TCL's counsel regarding he surrender of the said certificates of stock.[22] Teng then filed a counter manifestation where she pointed out a discrepancy between the total shares of Maluto based on the annexes, which is only 1305 shares, as against the 1440 shares acquired by Ting Ping based on the SEC Order dated August 9, 2006.[23]

On May 25, 2007, the SEC denied the motions to quash filed by Teng and TCL, and affirmed its Order dated August 9, 2006.[24]

Unperturbed, Teng filed a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 99836.[25] The SEC, through the Office of the Solicitor General (OSG), filed a Comment dated June 30, 2008,[26] which, subsequently, Teng moved to expunge.[27]

On April 29, 2008, the CA promulgated the assailed decision dismissing the petition and denying the motion to expunge the SEC's comment.[28]

Hence, Teng filed the present petition, raising the following grounds:

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[21] *Id*. at 170-171.

[22] *Id*. at 178-179.

[23] *Id*. at 189-190.

[24] *Id*. at 194-199.

[25] *Id*. at 200-218.

[26] *Id*. at 220-226.

[27] *Id*. at 227-230.

[28] *Id*. at 41-50; 52-53.

I. THE RESPONDENT [CA] GRAVELY ERRED IN DECLARING THAT THERE WAS NO NEED TO SURRENDER THE STOCK CERTIFICATES (REPRESENTING THE SHARES CONVEYED BY [MALUTO] TO [TING PING] TO RECORD THE TRANSFER THEREOF IN THE CORPORATE BOOKS AND ISSUE NEW STOCK CERTIFICATES[;]

II. THE RESPONDENT [CA] GRAVELY ERRED IN UPHOLDING THE POSE THAT THERE WAS NEITHER AMENDMENT NOR ALTERATION OF THE FINAL DECISION OF THE SUPREME COURT IN "TCL SALE[S] CORP., ET AL. VS. CA, ET AL.", G.R. NO. 129777, DESPITE THE CONTRARY RECORD THERETO[;]

III. THE RESPONDENT [CA] GRAVELY ERRED IN DECLARING THAT THE [OSG] WAS ALREADY REQUIRED TO COMMENT ON [TENG'S] MOTION FOR RECONSIDERATION.[29]

The core question before the Court is whether the surrender of the certificates of stock is a requisite before registration of the transfer may be made in the corporate books and for the issuance of new certificates in its stead. Note at this juncture that the present dispute involves the execution of the Court's decision in G.R. No. 129777 but only with regard to Chiu's and Maluto's respective shares. The subject of the orders of execution issued by the SEC pertained only to these shares and the Court's decision will revolve only on these shares.

Teng argues, among others, that the CA erred when it held that the surrender of Maluto's stock certificates is not necessary before their registration in the corporate books and before the issuance of new stock certificates. She contends that prior to registration of stocks in the corporate books, it is mandatory that the stock certificates are first surrendered because a corporation will be liable to a *bona fide* holder of the old certificate if, without demanding the said certificate, it issues a new one. She also claims that the CA's reliance on *Tan v. SEC*[30] is

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[29] *Id*. at 25-26.

[30] GR. No. 95696, March 3, 1992, 206 SCRA 740.

misplaced since therein subject stock certificate was allegedly surrendered.[31]

On the other hand, Ting Ping contends that Section 63 of the Corporation Code does not require the surrender of the stock certificate to the corporation, nor make such surrender an indispensable condition before any transfer of shares can be registered in the books of the corporation. Ting Ping considers Section 63 as a permissive mode of transferring shares in the corporation. Citing *Rural Bank of Salinas, Inc. v. CA,*[32] he claims that the only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred. Thus, for as long as the shares of stock are validly transferred, the corporate secretary has the ministerial duty to register the transfer of such shares in the books of the corporation, especially in this case because no less than this Court has affirmed the validity of the transfer of the shares in favor of Ting Ping.[33]

Ruling of the Court

To restate the basics —

A certificate of stock is a written instrument signed by the proper officer of a corporation stating or acknowledging that the person named in the document is the owner of a designated number of shares of its stock. It is *prima facie* evidence that the holder is a shareholder of a corporation.[34] A certificate, however, is merely a tangible evidence of ownership of shares of stock.[35] It is not a stock in the corporation and merely expresses the contract between the corporation and the stockholder.[36] The

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[31] *Rollo,* pp. 26-27.

[32] G.R. No. 96674, June 26, 1992, 210 SCRA 510.

[33] *Rollo,* pp. 260-261.

[34] *Lao, et al. v. Lao,* 588 Phil. 844, 857 (2008).

[35] *Republic of the Philippines v. Estate of Hans Menzi,* 512 Phil. 425, 460 (2005).

[36] *Makati Sports Club, Inc. v. Cheng, et al.,* 635 Phil. 103, 114 (2010).

shares of stock evidenced by said certificates, meanwhile, are regarded as property and the owner of such shares may, as a general rule, dispose of them as he sees fit, unless the corporation has been dissolved, or unless the right to do so is properly restricted, or the owner's privilege of disposing of his shares has been hampered by his own action.[37]

Section 63 of the Corporation Code prescribes the manner by which a share of stock may be transferred. Said provision is essentially the same as Section 35 of the old Corporation Law, which, as held in *Fleisher v. Botica Nolasco Co.*,[38] defines the nature, character and transferability of shares of stock. *Fleisher* also stated that the provision on the transfer of shares of stocks contemplates no restriction as to whom they may be transferred or sold. As owner of personal property, a shareholder is at liberty to dispose of them in favor of whomsoever he pleases, without any other limitation in this respect, than the general provisions of law.[39]

Section 63 provides:

> Sec. 63. *Certificate of stock and transfer of shares.* The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. **<u>Shares of stock</u> so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.** No transfer, however, shall be valid, except as between the parties, **until the transfer is recorded in the books of the corporation** showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
>
> No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (Emphasis and underscoring ours)

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[37] *Padgett v. Babcock & Templeton, Inc. and Babcock,* 59 Phil. 232, 234 (1933), citing 14 C.J., Sec. 1033, pp. 663, 664.

[38] 47 Phil. 583 (1925).

[39] *Id*. at 589.

Under the provision, certain minimum requisites must be complied with for there to be a valid transfer of stocks, to wit: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.[40]

It is the delivery of the certificate, coupled with the endorsement by the owner or his duly authorized representative that is the operative act of transfer of shares from the original owner to the transferee.[41] The Court even emphatically declared in *Fil-Estate Golf and Development, Inc., et al. v. Vertex Sales and Trading, Inc.*[42] that in "a sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased."[43] The delivery contemplated in Section 63, however, pertains to the **delivery of the certificate of shares by the transferor to the transferee**, that is, from the original stockholder named in the certificate to the person or entity the stockholder was transferring the shares to, whether by sale or some other valid form of absolute conveyance of ownership.[44] "[S]hares of stock may be transferred by **delivery to the transferee** of the certificate properly indorsed. Title may be vested in the transferee by the delivery of the duly indorsed certificate of stock."[45]

It is thus clear that Teng's position — that Ting Ping must first surrender Chiu's and Maluto's respective certificates of

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[40] *The Rural Bank of Lipa City, Inc. v. CA,* 418 Phil. 461, 472 (2001).

[41] *Id.; Bitong v. CA,* 354 Phil. 516, 541 (1998).

[42] 710 Phil. 831 (2013).

[43] *Id*. at 835-836, citing *Raquel-Santos, et al. v. CA, et al.,* 609 Phil. 630, 657 (2009).

[44] See *Monserrat v. Ceron,* 58 Phil. 469 (1933).

[45] *Razon v. Intermediate Appellate Court,* G.R. No. 74306, March 16, 1992, 207 SCRA 234, 240, citing *Embassy Farms, Inc. v. CA,* 266 Phil. 549, 557 (1990). See also *Lao, et al. v. Lao, supra* note 34.

stock before the transfer to Ting Ping may be registered in the books of the corporation — does not have legal basis. The delivery or surrender adverted to by Teng, *i.e.,* from Ting Ping to TCL, is not a requisite before the conveyance may be recorded in its books. To compel Ting Ping to deliver to the corporation the certificates as a condition for the registration of the transfer would amount to a restriction on the right of Ting Ping to have the stocks transferred to his name, which is not sanctioned by law. The only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred.

In *Rural Bank of Salinas,*[46] the Court ruled that the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.[47] In said case, the private respondent presented to the bank the deeds of assignment for registration, transfer of the shares assigned in the bank's books, cancellation of the stock certificates, and issuance of new stock certificates, which the bank refused. In ruling favorably for the private respondent, the Court stressed that **a corporation,** either by its board, its by-laws, **or the act of its officers, cannot create restrictions in stock transfers.** In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.[48] If a corporation refuses to make such transfer without good cause, it may, in fact, even be compelled to do so by *mandamus.*[49] With more reason in this case where the Court, in G.R. No. 129777, already upheld Ting Ping's definite and uncontested titles to the subject shares, *viz:*

Respondent Ting Ping Lay was able to establish *prima facie* ownership over the shares of stocks in question, through deeds of transfer of shares of stock of TCL Corporation. Petitioners could not repudiate these documents. **Hence, the transfer of shares to him <u>must</u> be**

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[46] *Supra* note 32.

[47] *Id*. at 516.

[48] *Id*., citing Fletcher, Sec. 5528, p. 434.

[49] *Id*., citing Fletcher, 5518, 12 Fletcher 394.

recorded on the corporation's stock and transfer book.[50] (Emphasis and underscoring ours)

In the same vein, Teng cannot refuse registration of the transfer on the pretext that the photocopies of Maluto's certificates of stock submitted by Ting Ping covered only 1,305 shares and not 1,440. As earlier stated, the respective duties of the corporation and its secretary to transfer stock are purely ministerial.[51] Aside from this, Teng's argument on this point was adequately explained by both the SEC and CA in this wise:

> In explaining the alleged discrepancy, the public respondent, in its 25 May 2007 order, cited the order of the Commission En Banc, thus:
>
> > "An examination of this decision, however, reveals, no categorical pronouncements of fraud. The refusal to credit in [Ting Ping's] favor five hundred eighty-five (585) shares in excess of what [Maluto] owned and the two hundred forty (240) shares that [Ting Ping] bought from the corporation, is a mere product of the failure of the corporation to register with the [SEC] the increase in the subscribed capital stock by 4000 shares last 1981. Surely, [Ting Ping] cannot be faulted for this."[52]

Nevertheless, to be valid against third parties and the corporation, the transfer must be recorded or registered in the books of corporation. There are several reasons why registration of the transfer is necessary: one, to enable the transferee to exercise all the rights of a stockholder;[53] two, to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the

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[50] *Supra* note 4, at 47.

[51] *Lee v. Hon. Presiding Judge Trocino, et al.,* 607 Phil. 690, 699 (2009), citing *Rural Bank of Salinas, Inc. v. CA, supra* note 32, at 516.

[52] *Rollo,* p. 48.

[53] *Republic of the Philippines v. Sandiganbayan,* 450 Phil. 98, 129 (2003), citing *Batangas Laguna Tayabas Bus Company, Inc. v. Bitanga,* 415 Phil. 43, 57 (2001). See also *De Erquiaga v. CA,* 258 Phil. 626, 637 (1989).

liabilities of a stockholder;[54] and three, to avoid fictitious or fraudulent transfers,[55] among others. Thus, in *Chua Guan v. Samahang Magsasaka, Inc.,*[56] the Court stated that the only safe way to accomplish the hypothecation of share of stock is for the transferee [a creditor, in this case] to insist on the assignment and delivery of the certificate and to obtain the transfer of the legal title to him on the books of the corporation by the cancellation of the certificate and the issuance of a new one to him.[57] In this case, given the Court's decision in G.R. No. 129777, registration of the transfer of Chiu's and Maluto's shares in Ting Ping's favor is a mere formality in confirming the latter's status as a stockholder of TCL.[58]

Upon registration of the transfer in the books of the corporation, the transferee may now then exercise all the rights of a stockholder, which include the right to have stocks transferred to his name.[59] In *Ponce v. Alsons Cement Corporation,*[60] the Court stated that "[f]rom the corporation's point of view, the transfer is not effective until it is recorded. Unless and until such recording is made[,] the demand for the issuance of stock certificates to the alleged transferee has no legal basis. x x x [T]he stock and transfer book is the basis for ascertaining the persons entitled to the rights and subject to the liabilities of a stockholder. Where a transferee is not yet recognized as a stockholder, the corporation is under no specific legal duty to issue stock certificates in the transferee's name."[61]

The manner of issuance of certificates of stock is generally regulated by the corporation's by-laws. Section 47 of the

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[54] *Republic of the Philippines v. Sandiganbayan, id.* at 129-130.

[55] *Escaño v. Filipinas Mining Corp., et al.,* 74 Phil. 711, 716 (1944).

[56] 62 Phil. 472 (1935).

[57] *Id.* at 481.

[58] See *Reyes v. Hon. RTC of Makati, Br. 142, et al.,* 583 Phil. 591 (2008).

[59] *Rural Bank of Salinas, Inc. v. CA, supra* note 32, at 516.

[60] 442 Phil. 98 (2002).

[61] *Id.* at 110-111.

Corporation Code states: "a private corporation may provide in its by-laws for x x x the manner of issuing stock certificates." Section 63, meanwhile, provides that "[t]he capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws." In *Bitong v. CA*,[62] the Court outlined the procedure for the issuance of new certificates of stock in the name of a transferee:

> *First,* the certificates must be signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. x x x *Second,* delivery of the certificate is an essential element of its issuance. x x x *Third,* the par value, as to par value shares, or the full subscription as to no par value shares, must first be fully paid. ***Fourth,* the original certificate must be surrendered where the person requesting: the issuance of a certificate is a transferee from a stockholder.**[63] (Emphasis ours and citations omitted)

The surrender of the original certificate of stock is necessary before the issuance of a new one so that the old certificate may be cancelled. A corporation is not bound and cannot be required to issue a new certificate unless the original certificate is produced and surrendered.[64] Surrender and cancellation of the old certificates serve to protect not only the corporation but the legitimate shareholder and the public as well, as it ensures that there is only one document covering a particular share of stock.

In the case at bench, Ting Ping manifested from the start his intention to surrender the subject certificates of stock to facilitate the registration of the transfer and for the issuance of new certificates in his name. It would be sacrificing substantial justice if the Court were to grant the petition simply because Ting Ping

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[62] 354 Phil. 516 (1998).

[63] *Id*. at 535.

[64] Lopez, R.N., *THE CORPORATION CODE OF THE PHILIPPINES ANNOTATED*, Volume II (1994 ed.), citing 12 Fletcher Cyc. Corp., Perm. Ed., Chapter 58, Section 5537, p. 589.

is yet to surrender the subject certificates for cancellation instead of ordering in this case such surrender and cancellation, and the issuance of new ones in his name.[65]

On the other hand, Teng, and TCL for that matter, have already deterred for so long Ting Ping's enjoyment of his rights as a stockholder. As early as 1989, Ting Ping already requested Teng to enter the transfer of the subject shares in TCL's Stock and Transfer Book; in 2001, the Court, in GR. No. 129777, resolved Ting Ping's rights as a valid transferee and shareholder; in 2006, the SEC ordered partial execution of the judgment; and in 2008, the CA affirmed the SEC's order of execution. The Court will not allow Teng and TCL to frustrate Ting Ping's rights any longer. Also, the Court will not dwell on the other issues raised by Teng as it becomes irrelevant in light of the Court's disquisition.

WHEREFORE, the petition is **DENIED**. The Decision dated April 29, 2008 and Resolution dated August 28, 2008 of the Court of Appeals in CA-G.R. SP No. 99836 are **AFFIRMED**.

Respondent Ting Ping Lay is hereby ordered to surrender the certificates of stock covering the shares respectively transferred by Ismaelita Maluto and Peter Chiu. Petitioner Anna Teng or the incumbent corporate secretary of TCL Sales Corporation, on the other hand, is hereby ordered, under pain of contempt, to immediately cancel Ismaelita Maluto's and Peter Chiu's certificates of stock and to issue new ones in the name of Ting Ping Lay, which shall include Ismaelita Maluto's shares not covered by any existing certificate of stock but otherwise validly transferred to Ting Ping Lay.

Costs against petitioner Anna Teng.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.,* concur.

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[65] See *C.N. Hodges, et al. v. Lezama, et al*., 122 Phil. 367, 371-372 (1965).

THIRD DIVISION

[G.R. No. 192233. February 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO1 CATALINO GONZALES, JR.,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; NOT AFFECTED BY INCONSISTENCIES THAT HAVE NOTHING TO DO WITH THE ELEMENTS OF THE CRIME.—** An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction. In fact in *People v. Macapanas* we added that these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed.
2. **ID.; ID.; ID.; INCONSISTENCIES BETWEEN A WITNESS' AFFIDAVIT AND TESTIMONY DO NOT NECESSARILY IMPAIR CREDIBILITY.—** It has been consistently held that discrepancies and/or inconsistencies between a witness' affidavit and testimony do not necessarily impair his credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. What is important is, in the over-all analysis of the case, the trial court's findings and conclusions are duly supported by the evidence on record.
3. **CRIMINAL LAW; KIDNAPPING FOR RANSOM; ELEMENTS; TIME IS NOT A MATERIAL INGREDIENT THEREIN.—** The elements of kidnapping for ransom under Article 267 of the Revised Penal Code (RPC), as amended, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim. Time is not a material ingredient in the crime of kidnapping. As long as all these elements were sufficiently established by the prosecution, a conviction for kidnapping is in order.
4. **ID.; ID.; THE *CORPUS DELICTI* IN THE CRIME OF KIDNAPPING FOR RANSOM IS THE FACT THAT AN**

INDIVIDUAL HAS BEEN DEPRIVED OF LIBERTY FOR THE PURPOSE OF EXTORTING RANSOM.— *Corpus delicti* is the fact of the commission of the crime which may be proved by the testimony of the witnesses who saw it. The *corpus delicti* in the crime of kidnapping for ransom is the fact that an individual has been in any manner deprived of his liberty for the purpose of extorting ransom from the victim or any other person. To prove the *corpus delicti,* it is sufficient for the prosecution to be able to show that (1) a certain fact has been proven – say, a person has died or a building has been burned; and (2) a particular person is criminally responsible for the act. The fact of kidnapping has been duly proved by Haitao who categorically testified that a kidnapping transpired, x x x Torrente, on the other hand, identified appellant as one of the captors.

5. **ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE; PROPER DAMAGES ARE CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES WITH 6% INTEREST FROM FINALITY OF DECISION UNTIL FULL PAYMENT.—** Article 267 of the RPC provides that the penalty of death shall be imposed if the kidnapping was committed for the purpose of extorting ransom x x x Pursuant to R.A. No. 9346, the penalty is correctly reduced to *reclusion perpetua,* without eligibility for parole. x x x Civil indemnity is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty. On the other hand, moral damages is warranted. Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock and similar injury. There is no doubt that Haitao suffered physical, mental and emotional trauma over the kidnapping of Tan and her two-year old son. In conformity with prevailing jurisprudence, the following amount of damages should be imposed: 1) ₱100,000.00 as civil indemnity; 2) ₱100,000.00 as moral damages; and 3) ₱100,000.00 as exemplary damages. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of the Court's Decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Edgardo S. Layno for accused-appellant.

D E C I S I O N

PEREZ, *J*.:

On appeal is the Decision[1] of the Court of Appeals in CA-G.R. CR.- H.C. No. 02638, affirming with modification the Judgment[2] of the Regional Trial Court (RTC), Trece Martirez City, Branch 23, convicting accused-appellant SPO1 Catalino Gonzales, Jr. for the crime of Kidnapping for Ransom.

On 30 January 2006, appellant was charged with Kidnapping for Ransom in the following Information:

That on December 28, 2005, at about 10:30 o'clock in the morning in the Municipality of Tanza, Province of Cavite and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with threats and/or intimidation and through the use of force, did then and there, willfully, unlawfully, and feloniously take, carry away, and deprive **PETER TAN** and his son **MICHAEL TAN**, a minor of two (2) years of age, of their respective liberties against their will for the purpose of extorting money as in fact a demand for money in the amount of Three Million (₱3,000,000.00) Pesos, Philippine Currency, was demanded as a condition for their safe release to their damage and prejudice.

With the attendance of the aggravating circumstance of abuse of authority against **SPO1 CATALINO GONZALES, PS1 NATHANIEL CAPITENEA and PO2 ARDEN G. LANAZA**, being active members of the Philippine National Police.[3]

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[1] *Rollo*, pp. 2-31; Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison concurring.

[2] Records, pp. 294-313; Presided by Executive Judge Aurelio G. Icasiano, Jr.

[3] *Id*. at 1-2.

On arraignment, appellant entered a plea of not guilty. Trial ensued.

The victim Peter Tan (Tan) and his wife Huang Haitao (Haitao) lived in Retirees' Village in Tanza, Cavite. They operated a stall in a market also in Tanza.

Haitao narrated in her Sworn Statement[4] that in the morning of 28 December 2005, Haitao left the house ahead of Tan and their two-year old son to go to the market. When Haitao arrived at their stall, she tried calling Tan in his phone but the latter did not answer. Finally, the call was answered by someone who introduced himself as a National Bureau of Investigation (NBI) agent and who told Haitao that her husband was arrested for illegal possession of *shabu*. Haitao immediately asked for her husband's whereabouts but the alleged NBI agent hung up. Haitao then called Tan's phone again. Before she could talk to her husband, someone snatched the phone away from Tan and told her that someone would get in touch with her. At around 10:30 a.m., an unknown Chinese man called up Haitao and informed her that her husband and son were detained for possession of drugs, and that she should pay off the captors. That evening, a man called Haitao and demanded ₱5,000,000.00 for the release of her husband and son. The demand was lowered to ₱3,000,000.00. Haitao was ordered by the captor to prepare the money and go to Luneta Park on the following day.

Haitao reported the incident to the Philippine Anti-Crime Emergency Response Unit (PACER) of the Philippine National Police. The Luneta Park meeting did not push through. Haitao still received various instructions from the captors to fetch her son until the PACER received information that Haitao's son was in White Cross Children's Home. Haitao was eventually reunited with her son.

On 15 January 2006, Haitao received a text message from an unidentified man who claimed that he knew about Tan's kidnapping and demanded ₱30,000.00 from Haitao. They met

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[4] *Rollo*, pp. 125-127.

at McDonald's restaurant in Tanza, Cavite. When the man, later identified as Edwin Torrente (Torrente) approached Haitao, he was arrested by PACER agents.

It turned out that Torrente was part of the group which forcibly took Tan and his son. In exchange for the needed information, Torrente was placed under the Witness Protection Program and was utilized as a state witness.

In his Sworn Statement,[5] Torrente narrated that on 27 December 2005, he was approached by appellant and told about a plan to arrest Tan, an alleged drug pusher in Tanza, Cavite. At around 7:00 a.m. on 28 December 2005, Torrente received a text message from appellant asking him to proceed to the Shell Gas Station along Coastal Road in Imus, Cavite. Thereat, Torrente met appellant, his son, Joy Gonzales, Lt. Capitanea, and nine other people. The group then proceeded to the Retirees' Village in Tanza, Cavite to conduct a surveillance of the house of appellant. At around 11:00 a.m., the group left the village and went to a nearby Mc Donald's restaurant to have some snacks. After eating, the group went back to the village and chanced upon Tan who was inside his Ford vehicle. They immediately blocked Tan's car, forced him and his son to alight from the vehicle, and boarded them into another vehicle. Torrente then went back to the gas station to get his motorcycle and proceeded to his house. On 31 December 2005, Torrente received a call from appellant informing him that Tan would soon be released as negotiations were ongoing. Torrente admitted that he called Haitao and asked for a meeting. When Torrente sensed the presence of policemen, he immediately surrendered and voluntarily gave his statement.

Appellant denied the charges against him and proffered the defense of alibi. Appellant claimed that on 28 December 2005, at 10:08 a.m., he was at the Land Bank of the Philippines branch in Dasmariñas, Cavite to encash his check. After encashing his check, appellant went home and stayed there until 8:00 p.m. to attend a party. On 31 December 2005, Torrente went to his

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[5] *Id.* at 128-131.

house and together, they conducted a surveillance against drug suspects. On 17 January 2006, he planned to meet up with Torrente at the Shell Station along Anabu Road in Imus, Cavite. When appellant arrived at the gas station, two armed men alighted from their vehicles and poked their guns on him. Appellant was then forcibly dragged into the vehicle. Appellant claimed that he was subjected to physical and mental torture before he was brought to the PACER office.[6]

The branch manager of Land Bank, Mr. Edgar Deligero, corroborated appellant's alibi. He acknowledged that a check under appellant's name was encashed on 28 December 2005 at 10:08 a.m. He noted that based on the bank's verification procedure, the signature of appellant is valid and an identification document was presented by the appellant. Hence, the bank manager confirmed that it was indeed appellant who personally encashed the check.[7]

Appellant's daughter corroborated appellant's statement that he was tortured. Jocelyn Gonzales witnessed his father's condition while the latter was detained in the PACER's office. She also saw a first medical certificate and heard the DOJ prosecutor order a second medical examination. Dr. Edilberto Antonio confirmed the issuance of two medical certificates certifying the injuries suffered by appellant.

On 12 July 2006, the trial court rendered judgment finding appellant guilty beyond reasonable doubt of the crime of Kidnapping for Ransom and sentencing him to suffer the penalty of *reclusion perpetua* and to pay ₱200,000.00 as exemplary damages.

Appellant challenged the trial court's decision affirming his conviction on the ground of alleged discrepancies in the testimonies and statements of prosecution witnesses. Appellant specifically pointed out the discrepancy in the time of the commission of the crime. Appellant asserted that based on the statement of Haitao, the kidnapping incident took place at around 10:30 a.m.

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[6] TSN, 1 June 2006, pp. 12-29.

[7] TSN, 20 June 2006, pp. 27-31.

while state witness Torrente, claimed that the kidnapping occurred after 11:00 a.m. Furthermore, appellant insisted that Torrente's claim that he and appellant were together from 7:30 a.m. up to after 11:00 a.m. on 28 December 2005 is inconsistent with the fact that appellant, as confirmed by the branch manager, was at the Land Bank branch in Dasmariñas, Cavite at 10:08 a.m. to encash a check. Based on these inconsistencies, appellant maintained that he should be acquitted. Appellant also argued that the absence of the victim puts in serious doubt the presence of the *corpus delicti*.

The Office of the Solicitor General (OSG), for its part, recommended that appellant be held guilty of kidnapping for ransom. The OSG contended that there is no material discrepancy as to time that would tend to create reasonable doubt as to appellant's guilt. The OSG stressed that the *corpus delicti* in this case is the actual confinement, detention and restraint on the victims. The OSG asserted that the prosecution has proven that the detention of the victims was perpetrated by appellant, among others.

In a Decision[8] dated 12 November 2009, the Court of Appeals affirmed the ruling of the trial court.

The appellate court rejected appellants' defense of alibi and held that it cannot prevail over the positive identification by the state witness. The appellate court also dismissed the alleged disparities on the sworn statements and testimonies of prosecution witnesses as trivial and minor details that do not detract in any way from the main thrust of what the prosecution witnesses related in court.

On 7 July 2010, this Court required the parties to simultaneously file their respective Supplemental Briefs.[9] While the OSG manifested that it is adopting its brief earlier filed before the Court of Appeals,[10] appellant filed his Supplemental

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[8] *Rollo*, pp. 2-31.

[9] *Id*. at 38-39.

[10] *Id*. at 153-155.

Brief[11] reiterating that the inconsistent statements of the prosecution witnesses with respect to the time of the commission of the crime are so crucial to merit his acquittal. Appellant maintains that he was at the bank at 10:08 a.m. Using this as a reckoning point, both of the prosecution witnesses' claim of the time of kidnapping are erroneous. The disparity in the statements of the prosecution witnesses creates a doubt in the guilt of the accused which, according to appellant, should work for his acquittal.

The bone of contention in this case is whether the inconsistent statements of prosecution witnesses with regard to the time of the commission of the crime will exonerate appellant.

In *People v. Delfin*,[12] a case involving simple rape, the Court held that where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. In a case for illegal sale and possession of dangerous drugs,[13] the Court ruled that inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction. In fact in *People v. Macapanas*,[14] we added that these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed.

The alleged inconsistencies related to the time the kidnapping was committed. The elements of kidnapping for ransom under Article 267 of the Revised Penal Code (RPC), as amended, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his

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[11] *Id*. at 46-78.

[12] G.R. No. 190349, 10 December 2014.

[13] *People v. Villahermosa*, G.R. No. 186465, 1 June 2011, 650 SCRA 256, 276.

[14] 634 Phil. 125, 145 (2010).

liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim.[15] Time is not a material ingredient in the crime of kidnapping. As long as all these elements were sufficiently established by the prosecution, a conviction for kidnapping is in order.

At any rate, Torrente declared during the cross-examination that he tried to rectify the error with regard to the time, thus:

<u>CROSS-EXAMINATION OF THE WITNESS CONDUCTED BY ATTY. MAPILE:</u>

ATTY. MAPILE:

Q Mr. Witness, you said you talked to the Prosecutor before taking to the witness stand, is it not?

WITNESS:

A Yes, sir. He explained to me that if I am telling the truth, sir.

Q And he also explained to you the need of correcting paragraph 5 in your sworn statement, is it not because of a typographical error?
A Yes, sir.

Q And except for that error, you confirmed everything to be true and accurate on figures and dates especially the time, am I right?
A Yes, sir.

ATTY. MAPILE:

Q And you have nothing, you have no desire subsequent to correct, to make any further correction?

WITNESS:

A I have, sir. With respect to time only.

Q What time are you talking about Mr. Witness?
A When Peter Tan was taken, it could be more or less 10:00 in the morning, sir.

Q Instead of what? What appears in your statement when he was abducted or taken?

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[15] *People v. Yau*, G.R. No. 208170, 20 August 2014, 733 SCRA 608, 629.

A No more, sir. He was abducted more or less 10:00 o'clock in the morning.

Q You had occasion to read how many times your sworn statement before signing it?
A For about five (5) times, sir.

Q Why did you notice for the first time that Number 5, question number 5 and answer number 5 should be corrected?
A For the third time, sir.

ATTY. MAPILE:

Q And when was the time when you also discovered that the abduction was 10:00 o'clock instead of beyond 10:00 o'clock of December 28, 2005?

WITNESS:

A For the second time, sir.

Q You mean for the second time, the second time that you read your statement?
A Yes, sir.

Q When was that Mr. Witness?
A Before I signed it, sir.

Q Before you signed it, it was stated you did not forget the one who prepared your statement?
A I called the attention of the one who prepared, sir.

Q But what he say?
A According to the Investigator, they changed it already, sir.

Q So you did not sign that purported sworn statement, that sworn statement was already changed?

COURT:

Let us make this clear counsel. As per statement given on January 17 and one January 24.

ATTY. MAPILE:

I'm merely referring to the 17, Your Honor.

COURT:

17.

WITNESS:

A I did not, sir.

ATTY. MAPILE:

Q You did not because you pointed out the mistake?
A Yes, sir.

Q When you refused to sign because you disclosed to get the error, did the Investigator changed your statement?
A Yes, sir.

PROSE. PARICO:

Your Honor, the witness answered earlier "Binago Na Po", that was his statement, Your Honor.

WITNESS:

A The sworn statement is the same, sir.

ATTY. MAPILE:

Q In short, they did not correct the error that you pointed out?
A No, sir. I did not change it.

Q And despite pointing out the error, they did not change it anymore?
A I do not know the reason, sir.[16]

Appellant now seeks to assail the testimony of Torrente as a "last-minute adjustment" which weakens the testimony.

It has been consistently held that discrepancies and/or inconsistencies between a witness' affidavit and testimony do not necessarily impair his credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. What is important is, in the over-all analysis of the case, the trial court's findings and conclusions are duly supported by the evidence on record.[17]

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[16] TSN, 9 May 2006, pp. 41-45.

[17] *People v. Galicia*, G.R. No. 191063, 9 October 2013, 707 SCRA 267, 280.

In this case, both the RTC and the Court of Appeals gave credit to Torrente's statement. It is a well-settled rule that factual findings of the trial court regarding the credibility of witnesses are accorded great weight and respect especially if affirmed by the Court of Appeals. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility of witnesses.[18]

A concomitant issue is whether the *corpus delicti* was proven despite the non-presentation of the kidnap victims during trial. Appellant stresses that the *corpus delicti* was not proven because Tan[19] could not be found.

Corpus delicti is the fact of the commission of the crime which may be proved by the testimony of the witnesses who saw it.[20] The *corpus delicti* in the crime of kidnapping for ransom is the fact that an individual has been in any manner deprived of his liberty for the purpose of extorting ransom from the victim or any other person.[21]

To prove the *corpus delicti*, it is sufficient for the prosecution to be able to show that (1) a certain fact has been proven — say, a person has died or a building has been burned; and (2) a particular person is criminally responsible for the act.[22]

The fact of kidnapping has been duly proved by Haitao who categorically testified that a kidnapping transpired, to wit:

PROSE. PARICO:

May I manifest, Your Honor, that while the witness is reading intensely the affidavit No. 8, she is continues crying, Your Honor.

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[18] *People v. Ramos*, G.R. No. 190340, 24 July 2013, 702 SCRA 204, 218-219.

[19] There is nothing in the records which indicate the whereabouts of Peter Tan in the letter submitted by appellant, he surmised that Peter Tan might be the same person captured by the police in a drug raid in Pangasinan. This claim however is not supported by any evidence.

[20] *People v. Mittu*, 388 Phil. 779, 792 (2000).

[21] *People v. Castro*, 434 Phil. 206, 220 (2002).

[22] *Rimorin, Jr. v. People*, 450 Phil. 465, 474 (2003).

COURT:

Okay, noted the manifestation of the counsel is granted that while witness is reading paragraph No. 8 question and answer the witness is crying. Noted. Can you interpret in Chinese?

WITNESS:

A And when she went to the Palengke, they were not in the same car. She went ahead and then Peter and the son followed in another car with Plate No. PTY-955. She called her husband five times and nobody was answering, sir. The husband was not answering the cellphone, her cellphone and somebody answered a voice, the voice of a male, Filipino voice. The man said that they arrested Peter, they are from NBI and they arrested him because he has in possession one (1) kilo of shabu, sir. She said that she cannot believe it. They are just telling lies. She could not believe that Peter Tan is in possession of shabu and if Peter will be arrested why will be include my son. She said that she has a business in the market doing glassware and houseware in Tanza, sir.

x x x x x x x x x

A I called again the cellphone of Peter, sir. She got to talk on Peter at the cellphone and Peter clearly told her in Chinese to ask them where is the child, a boy and quickly, they cut the cellphone. So when she got to talk to the person on the other line, they answered if he is Chinese or Filipino and she said she is Chinese and there somebody who speak to her in Chinese, sir. The Chines[e] told her that his friend gave this Chinese her cellphone number. The Chinese said that they arrested him because her husband has shabu and had a case, sir. And the Chinese said that they are kidnapping the husband and they wanted for ransom and the Chinese said that he is not going to help anymore he wants to go home. He doesn't want to get involve. He doesn't want to get anymore and he wants to go home. She asked again, what is really the case and please don't get the child, don't involve the child in this case, in the case of her husband. She said she was asking the other line where did they bring my husband and what office they brought him to and if she knows the office, she is going to get a lawyer. Then she

> asked them to return the child, her son back to her. The Chinese said that Yah, why did you involve the child and after that switch off the cellphone, sir.[23]

Torrente, on the other hand, identified appellant as one of the captors.

Article 267 of the RPC provides that the penalty of death shall be imposed if the kidnapping was committed for the purpose of extorting ransom, thus:

> Art. 267. Kidnapping and serious illegal detention. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
>
> 2. If it shall have been committed simulating public authority.
>
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
>
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;
>
> The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.
>
> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Pursuant to R.A. No. 9346, the penalty is correctly reduced to *reclusion perpetua*, without eligibility for parole.

We observe that the lower courts failed to award civil indemnity and moral damages in this case. Civil indemnity is awarded if the crime is qualified by circumstances warranting the imposition

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[23] TSN, 9 May 2006, pp. 19-22.

of the death penalty.[24] On the other hand, moral damages is warranted. Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock and similar injury. There is no doubt that Haitao suffered physical, mental and emotional trauma over the kidnapping of Tan and her two-year old son.

In conformity with prevailing jurisprudence,[25] the following amount of damages should be imposed:

1) ₱100,000.00 as civil indemnity;
2) ₱100,000.00 as moral damages; and
3) ₱100,000.00 as exemplary damages.

In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of the Court's Decision until fully paid.[26]

WHEREFORE, the appeal is **DISMISSED**. The appealed decision is **AFFIRMED** with **MODIFICATIONS** that appellant SPO1 Catalino Gonzales, Jr. is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the family of the kidnap victim Peter Tan the following amounts: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages; and (3) ₱100,000.00 as exemplary damages, all with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

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[24] *People v. Roxas*, G.R. No. 172604, 17 August 2010, 628 SCRA 378, 403 citing *People v. Sarcia*, G.R. No. 169641, 10 September 1999, 599 SCRA 20, 44-45.

[25] *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508, 533.

[26] *People v. Licayan,* G.R. No. 203961, 29 July 2015.

THIRD DIVISION

[G.R. No. 201927. February 17, 2016]

VICENTE D. CABANTING and LALAINE V. CABANTING, *petitioners, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION.—** It is important to stress the Court's ruling in *Dio v. St. Ferdinand Memorial Park, Inc.,* to wit: A contract of adhesion, wherein one party imposes a ready-made form of contract on the other, is not strictly against the law. **A contract of adhesion is as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.** x x x **The validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned.** Indeed, Article 24 of the New Civil Code provides that "[in] all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age, or other handicap, the courts must be vigilant for his protection." x x x

2. **REMEDIAL LAW; EVIDENCE; NO DEPRIVATION OF DUE PROCESS WHERE PARTY WAS GIVEN SEVERAL OPPORTUNITIES BUT FAILED TO PRESENT EVIDENCE.—** There is likewise no merit to petitioners' claim that they were deprived of due process when they were deemed to have waived their right to present evidence. Time and again, the Court has stressed that there is no deprivation of due process when a party is given an opportunity to be heard, not only through hearings but even through pleadings, so that one may explain one's side or arguments; or an opportunity to seek reconsideration of the action or ruling being assailed. The records bear out that herein petitioners were given several opportunities to present evidence, but said opportunities were frittered away.

3. **CIVIL LAW; DAMAGES; INTEREST; LEGAL INTEREST IS SIX PERCENT (6%) PER ANNUM.—** [T]he CA is correct that the interest rate being charged by respondent under the Promissory Note with Chattel Mortgage is quite unreasonable. x x x [P]ursuant to prevailing jurisprudence and banking regulations, the Court must modify the lower court's award of legal interest. x x x Thus, legal interest, effective July 1, 2013, was set at six percent (6%) *per annum* in accordance with *Bangko Sentral ng Pilipinas* — Monetary Board Circular No. 799, Series of 2013.

APPEARANCES OF COUNSEL

Rama Sampana Eusebio-Cruz Raya & Associates Law Offices for petitioners.

Benedicto and Associates Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision[1] of the Court of Appeals *(CA),* promulgated on September 28, 2011, and the Resolution[2] dated May 16, 2012, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

The antecedent facts are as follows:

On January 14, 2003, petitioners bought on installment basis from Diamond Motors Corporation a 2002 Mitsubishi Adventure SS MT and for value received, petitioners also signed, executed and delivered to Diamond Motors a Promissory Note with Chattel Mortgage. Therein, petitioners jointly and severally obligated themselves to pay Diamond Motors the sum of ₱836,032.00, payable in monthly installments in accordance with the schedule

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor, concurring; *rollo,* pp. 38-47.

[2] *Id.* at 49-51.

of payment indicated therein, and which obligation is secured by a chattel mortgage on the aforementioned motor vehicle. On the day of the execution of the document, Diamond Motors, with notice to petitioners, executed a Deed of Assignment, thereby assigning to BPI Family Savings Bank, Inc. *(BPI Family)* all its rights, title and interest to the Promissory Note with Chattel Mortgage.

Come October 16, 2003, however, a Complaint was filed by BPI Family against petitioners for Replevin and damages before the Regional Trial Court of Manila *(RTC),* praying that petitioners be ordered to pay the unpaid portion of the vehicle's purchase price, accrued interest thereon at the rate of 36% *per annum* as of August 26, 2003, 25% attorney's fees and 25% liquidated damages, as stipulated on the Promissory Note with Chattel Mortgage. BPI Family likewise prayed for the issuance of a writ of replevin but it failed to file a bond therefor, hence, the writ was never issued. BPI Family alleged that petitioners failed to pay three (3) consecutive installments and despite written demand sent to petitioners through registered mail, petitioners failed to comply with said demand to pay or to surrender possession of the vehicle to BPI Family.

In their Answer, petitioners alleged that they sold the subject vehicle to one Victor S. Abalos, with the agreement that the latter shall assume the obligation to pay the remaining monthly installments. It was then Abalos who made payments to BPI Family through his personal checks, and BPI Family accepted the post-dated checks delivered to it by Abalos. The checks issued by Abalos for the months of May 2003 to October 2003 were made good, but subsequent checks were dishonored and not paid. Petitioners pointed out that BPI Family should have sued Abalos instead of them.

Trial ensued, where BPI Family dispensed with the testimony of its sole witness and formally offered its documentary evidence. When it was petitioners' turn to present its defense, several hearing dates were cancelled, sometimes due to failure of either or both the petitioners' and/or respondent's counsels to appear. What is clear, though, is that despite numerous opportunities given

to petitioners to present evidence, they were never able to present their witness, Jacobina T. Alcantara, despite the court's issuance of a *subpoena duces tecum ad testificandum.* Said failure to present evidence on several hearing dates and petitioners' absence at the hearing on February 13, 2008 prompted BPI Family to move that petitioners' right to present evidence be deemed waived. On the same date, the RTC granted said motion and the case was submitted for decision. There is nothing on record to show that petitioners ever moved for reconsideration of the Order dated February 13, 2008.

On April 14, 2008, the RTC rendered a Decision, the dispositive portion of which reads as follows:

> **WHEREFORE**, and in the view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff BPI Family Savings Bank, Inc. and against the defendants **VICENTE D. CABANTING** and **LALAINE V. CABANTING**, by ordering the latter to pay the plaintiff Bank the sum of Php742,022.92, with interest at the rate of 24% *per annum* from the filing of the Complaint, until its full satisfaction, as well as the amount of ₱20,000.00 for and as attorney's fees.
>
> With costs against the defendants.
>
> **SO ORDERED**.[3]

Aggrieved by the RTC's Decision, herein petitioners appealed to the CA. However, in its Decision dated September 28, 2011, the appellate court affirmed with modification the judgment of the trial court, to wit:

> **WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision of the Regional Trial Court dated April 14, 2008 is **AFFIRMED but with MODIFICATION**. The defendants-appellants are ordered to pay the plaintiff-appellee the sum of **Seven Hundred Forty Thousand One Hundred Fifty-Five Pesos and Eighteen Centavos (₱740,155.18), in Philippine currency, with legal interest of 12% *per annum*** from the filing of the Complaint, until its full satisfaction. **The award of Twenty Thousand Pesos (₱20,000.00) as attorney's fees is DELETED**.

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[3] *Rollo,* p. 115. (Emphasis in the original)

Costs against the defendants-appellants.

SO ORDERED.[4]

The CA ruled that a preponderance of evidence was in favor of respondent, as the evidence, coupled with petitioners' admission in their Answer, established that petitioners indeed executed a Promissory Note with Chattel Mortgage and then failed to pay the forty-three (43) monthly amortizations. Moreover, since petitioners were deemed to have waived their right to present evidence, there is nothing on record to prove their claim that there was a valid assumption of obligation by one Victor S. Abalos. Petitioners' motion for reconsideration of the CA Decision was denied per Resolution dated May 16, 2012.

Elevating the matter to this Court *via* a petition for review on *certiorari,* petitioners now raise the following issues:

l. Whether or not respondent bank may be held entitled to the possession of the motor vehicle subject of the instant case for replevin, or the payment of its value and damages, without proof of prior demand;

2. Whether or not petitioners were deprived of their right to due process when they were deemed to have waived their right to present evidence in their behalf.[5]

The petition is devoid of merit.

The CA is correct that no prior demand was necessary to make petitioners' obligation due and payable. The Promissory Note with Chattel Mortgage clearly stipulated that "[i]n case of my/our [petitioners'] failure to pay when due and payable, any sum which I/We x x x or any of us may now or in the future owe to the holder of this note x x x then the entire sum outstanding under this note shall immediately become due and payable without the necessity of notice or demand which I/We hereby waive."[6] Petitioners argue that such stipulation should

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[4] *ld* at 47. (Emphasis in the original)

[5] *Id.* at 22.

[6] *Id.* at 61.

be deemed invalid as the document they executed was a contract of adhesion. It is important to stress the Court's ruling *in Dio v. St. Ferdinand Memorial Park, Inc.*[7] to wit:

> A contract of adhesion, wherein one party imposes a ready-made form of contract on the other, is not strictly against the law. **A contract of adhesion is as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.** Contrary to petitioner's contention, not every contract of adhesion is an invalid agreement. As we had the occasion to state in *Development Bank of the Philippines v. Perez:*
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>> x x x In discussing the consequences of a contract of adhesion, we held in *Rizal Commercial Banking Corporation v. Court of Appeals:*
>>
>>> It bears stressing that a contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing, **Nevertheless, contracts of adhesion are not invalid *per se;* they arc not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.**
>
> **The validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned.** Indeed, Article 24 of the New Civil Code provides that "[in] all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age, or other handicap, the courts must be vigilant for his protection." x x x[8]

Here, there is no proof that petitioners were disadvantaged, uneducated or utterly inexperienced in dealing with financial

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[7] 538 Phil. 944 (2006).

[8] *Dio v. St. Ferdinand Memorial Park, Inc., supra,* at 959-960. (Emphasis supplied)

institutions; thus, there is no reason for the court to step in and protect the interest of the supposed weaker party.

Verily, petitioners are bound by the aforementioned stipulation in the Promissory Note with Chattel Mortgage waiving the necessity of notice and demand to make the obligation due and payable. *Agner v. BPI Family Savings Bank, lnc.,*[9] which is closely similar to the present case, is squarely applicable. Petitioners therein also executed a Promissory Note with Chattel Mortgage containing the stipulation waiving the need for notice and demand. The Court ruled:

> x x x Even assuming, for argument's sake, that no demand letter was sent by respondent, there is really no need for it because petitioners legally waived the necessity of notice or demand in the Promissory Note with Chattel Mortgage, which they voluntarily and knowingly signed in favor of respondent's predecessor-in-interest. Said contract expressly stipulates:
>
>> In case of my/our failure to pay when due and payable, any sum which I/We are obliged to pay under this note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this note or to any other party whether as principal or guarantor x x x then the entire sum outstanding under this note shall, **without prior notice or demand**, immediately become due and payable. (Emphasis and underscoring supplied)
>>
>> A provision on waiver of notice or demand has been recognized as legal and valid in *Bank of the Philippine Islands v. Court of Appeals,* wherein We held:
>>
>>> The Civil Code in Article 1169 provides that one incurs in delay or is in default from the time the obligor demands the fulfillment of the obligation from the obligee. However, the law expressly provides that demand is not necessary under certain circumstances, and one of these circumstances is when the parties expressly waive demand. Hence, since the co-signors expressly waived demand in the promissory notes, demand was unnecessary for them to be in default.

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[9] G.R. No. 182963, June 3, 2013, 697 SCRA 89.

Further, the Court even ruled in *Navarro v. Escobido* that prior demand is not a condition precedent to an action for a writ of replevin, since there is nothing in Section 2, Rule 60 of the Rules of Court that requires the applicant to make a demand on the possessor of the property before an action for a writ of replevin could be filed.[10]

Clearly, as stated above, Article 1169 (1) of the Civil Code allows a party to waive the need for notice and demand. Petitioners' argument that their liability cannot be deemed due and payable for lack of proof of demand must be struck down.

There is likewise no merit to petitioners' claim that they were deprived of due process when they were deemed to have waived their right to present evidence. Time and again, the Court has stressed that there is no deprivation of due process when a party is given an opportunity to be heard, not only through hearings but even through pleadings, so that one may explain one's side or arguments; or an opportunity to seek reconsideration of the action or ruling being assailed.[11] The records bear out that herein petitioners were given several opportunities to present evidence, but said opportunities were frittered away. We stress the fact that petitioners did not even bother to move for reconsideration of the Order dated February 13, 2008, deeming petitioners to have waived their right to present evidence. Such is glaring proof of their propensity to waste the opportunities granted them to present their evidence.

Lastly, the CA is correct that the interest rate being charged by respondent under the Promissory Note with Chattel Mortgage is quite unreasonable. In *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank,*[12] the Court ruled that **"the interest ranging from 26 percent to 35 percent in the statements of account — 'must be equitably reduced for being iniquitous, unconscionable and exorbitant.' Rates found**

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[10] *Agner v. BPI Family Savings Bank, Inc., supra,* at 94-95.

[11] *Resurreccion v. People,* G.R. No. 192866, July 9, 2014, 729 SCRA 508, 524.

[12] 479 Phil. 483, 499 (2004). (Emphasis supplied, citations omitted)

to be iniquitous or unconscionable are void, as if it there were no express contract thereon. Above all, it is undoubtedly against public policy to charge excessively for the use of money." However, pursuant to prevailing jurisprudence and banking regulations, the Court must modify the lower court's award of legal interest. In *Nacar v. Gallery Frames,*[13] the Court held, thus:

x x x the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, *i.e.,* law, contracts, quasi- contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall

[13] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[14]

Thus, legal interest, effective July 1, 2013, was set at six percent (6%) *per annum* in accordance with *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, Series of 2013.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals, promulgated on September 28, 2011, and the Resolution dated May 16, 2012 in CA-G.R. CV No. 91814 are **AFFIRMED with MODIFICATION** by ordering payment of legal interest at the rate of twelve percent (12%) *per annum* from the time of filing of the complaint up to June 30, 2013, and thereafter, at the lower rate of six percent (6%) *per annum* from July 1, 2013 until full satisfaction, pursuant to *Bangko Sentral ng Pilipinas* —Monetary Board Circular No. 799, Series of 2013 and applicable jurisprudence.

SO ORDERED.

Velasco, Jr. (Chairperson), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

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[14] *Id.* at 457-458.

THIRD DIVISION

[G.R. No. 203678. February 17, 2016]

CONCORDE CONDOMINIUM, INC., by itself and comprising the Unit Owners of Concorde Condominium Building, *petitioner, vs.* **AUGUSTO H. BACULIO; NEW PPI CORPORATION; ASIAN SECURITY AND INVESTIGATION AGENCY and its security guards; ENGR. NELSON B. MORALES, in his capacity as Building Official of the Makati City Engineering Department; SUPT. RICARDO C. PERDIGON, in his capacity as City Fire Marshal of the Makati City Fire Station; F/C SUPT. SANTIAGO E. LAGUNA, in his capacity as Regional Director of the Bureau of Fire Protection-NCR, and any and all persons acting with or under them,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF A CASE IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.—** "[J]urisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein."

2. **ID.; ID.; AS COURTS OF GENERAL JURISDICTION, DESIGNATED SPECIAL COMMERCIAL COURTS AND THE REGULAR REGIONAL TRIAL COURTS (RTCs)**

ARE BOTH CONFERRED BY LAW THE POWER TO HEAR AND DECIDE CIVIL CASES IN WHICH THE SUBJECT OF THE LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION.— As a rule, actions for injunction and damages lie within the jurisdiction of the RTC, pursuant to Section 19 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, as amended by R.A. 7691. x x x Meanwhile, Section 6(a) of P.D. No. 902-A empowered the SEC to issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it exercises original and exclusive jurisdiction x x x However, jurisdiction of the SEC over intra-corporate cases was transferred to Courts of general jurisdiction or the appropriate Regional Trial Court when R.A. No. 8799 took effect on August 8, 2000. x x x In *GD Express Worldwide N. V., et al. v. Court of Appeals (4th Div.) et al.,* the Court stressed that Special Commercial Courts are still considered courts of general jurisdiction which have the power to hear and decide cases of all nature, whether civil, criminal or special proceedings, x x x In *Gonzales v. GJH Land, Inc., et al.,* the Court *en banc,* voting 12-1, explained [that the] transfer of jurisdiction over cases enumerated in Section 5 of P.D. 902-A was made to the RTCs in general, and not only in favor of particular RTC branches *(Special Commercial Courts).* [Thus, it is] clearly settled that as courts of general jurisdiction, the designated Special Commercial Courts and the regular RTCs are both conferred by law the power to hear and decide civil cases in which the subject of the litigation is incapable of pecuniary estimation, such as an action for injunction.

3. **ID.; PROVISIONAL REMEDIES; CONCEPT OF AN ACTION FOR INJUNCTION AS AN ORDINARY CIVIL ACTION.—** The concept of an action for injunction, as an ordinary civil action, was discussed in *BPI v. Hong, et al.* as follows: An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding. In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory, may issue.

APPEARANCES OF COUNSEL

Cruz & Capule Law Offices for petitioner.

Norman R. Gabriel for respondents Augusto Baculio and New PPI, Corp.

Santiago Arevalo Asuncion & Associates for respondent Asian Security & Investigation Agency.

Amando A. Fabio for respondent Building Official of Makati City.

Magtanggol M. Castro, Charina A. Soria & *Anthony Lemuel T. Lim* for Supt. Ricardo Perdigon & Fire Chief Santiago E. Laguna.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Order dated June 28, 2012 and Resolution dated September 20, 2012 of the Regional Trial Court (*RTC*) of Makati City, Branch 149,[1] which dismissed Civil Case No. 12-309 for Injunction with Damages for lack of jurisdiction.

The antecedent facts are as follows:

On April 16, 2012, petitioner Concorde Condominium, Inc., by itself and comprising the Unit Owners of Concorde Condominium Building, (*petitioner*) filed with the Regional Trial Court (*RTC*) of Makati City a Petition for Injunction [with Damages with prayer for the issuance of a Temporary Restraining Order (*TRO*), Writ of Preliminary (Prohibitory) Injunction, and Writ of Preliminary Mandatory Injunction] against respondents New PPI Corporation and its President Augusto H. Baculio; Asian Security and Investigation Agency and its security guards, Engr. Nelson B. Morales in his capacity as Building Official of the Makati City Engineering Department; Supt. Ricardo C.

[1] Penned by Presiding Judge Cesar O. Untalan.

Perdigon in his capacity as City Fire Marshal of the Makati City Fire Station; F/C Supt. Santiago E. Laguna, in his capacity as Regional Director of the Bureau of Fire Protection NCR, and any and all persons acting with or under them (*respondents*).

Petitioner seeks (1) to enjoin respondents Baculio and New PPI Corporation from misrepresenting to the public, as well as to private and government offices/agencies, that they are the owners of the disputed lots and Concorde Condominium Building, and from pushing for the demolition of the building which they do not even own; (2) to prevent respondent Asian Security and Investigation Agency from deploying its security guards within the perimeter of the said building; and (3) to restrain respondents Engr. Morales, Supt. Perdigon and F/C Supt. Laguna from responding to and acting upon the letters being sent by Baculio, who is a mere impostor and has no legal personality with regard to matters concerning the revocation or building and occupancy permits, and the fire safety issues of the same building. It also prays to hold respondents solidarily liable for actual damages, moral damages, exemplary damages, attorney's fees, litigation expenses and costs of suit.

The case was docketed as Civil Case No. No. l2-309 and raflled to the Makati RTC, Branch 149, which was designated as a Special Commercial Court.[2]

On April 24, 2012, the RTC called the case for hearing to determine the propriety of issuing a TRO, during which one Mary Jane Prieto testified and identified some documents. While she was undergoing cross- examination by a counsel from the Office of the Solicitor General (*OSG*) relative to the fire deficiencies of petitioner's building, the RTC interrupted her testimony to find a better solution to the problem, and issued an Order which reads:

> Wherefore, this court ordered Supt. Ricardo C. Perdigon, Fire Marshal of Makati City, to conduct an inspection of Concorde Condominium Building. He is hereby ordered to submit a report

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[2] Per A.M. No. 03-03-03-SC dated June 27, 2006.

on his investigation not later than 5:00 o'clock in the afternoon tomorrow.

In the same manner, the Building Official of Makati City, being represented by Atty. Fabio is also hereby ordered to conduct an investigation on the status of the said building to ascertain whether it [is] still structurally sound to stand. Such report shall be submitted to this court not later than 5:00 o'clock in the afternoon tomorrow.

If the report of the Building Official is negative, the unit owners of the condominium will be given the opportunity to be heard on whether to condemn the building or not.

In the same manner, the alleged owner of the land, who should have transferred it to the condominium corporation once the latter was created, and it appears that it was not complied with, they are also given the opportunity to get their own structural engineer to ascertain the structural soundness of the building. Afterwhich, the court will issue the necessary order whether to condemn or not the building and the President of the condominium corporation has acceded to such undertaking because that's the only way how to give them fair play and be heard on their right as condominium owner of Concorde Building located at 200 Benavidez corner Salcedo Streets, Legaspi Village, Makati City.

The President of the condominium corporation is hereby given, if there is still a chance to repair, four (4) months from April 30, 2012 or up to August 30, 2012 to remedy all those problems and/or deficiencies of the building.

The other parties are hereby enjoined not to threaten, interfere or molest the condominium unit owners of said building. Any other party, including the herein parties, who will obstruct the smooth implementation of this Order, is already considered to have committed a direct contempt of the order of the court.

Let the continuation of the testimony of Ms. Mary Jane Prieto be set on September 17, 2012 at 8:30 in the morning.

SO ORDERED.[3]

Meanwhile, respondents Baculio and New PPI Corporation filed an Urgent Motion to Re-Raffle dated April 25, 2012,

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[3] *Rollo,* pp. 201-202.

claiming that it is a regular court, not a Special Commercial Court, which has jurisdiction over the case.

In an Order dated April 26, 2012, the RTC denied the motion to re-raffle on the ground of failure to comply with Sections 4[4] and 5[5] of Rule 15 of the Rules of Court.

In their Motion to Vacate Order and Motion to Dismiss dated May 8, 2012, respondents Baculio and New PPI Corporation assailed the RTC Order dated April 24, 2012, stating that the case is beyond its jurisdiction as a Special Commercial Court. Respondents claimed that the petition seeks to restrain or compel certain individuals and government officials to stop doing or performing particular acts, and that there is no showing that the case involves a matter embraced in Section 5 of Presidential Decree *(P.D.)* No. 902-A, which enumerates the cases over which the SEC *[now the RTC acting as Special Commercial Court pursuant to Republic Act (R.A.) No. 8799]* exercises exclusive jurisdiction. They added that petitioner failed to exhaust administrative remedies, which is a condition precedent before filing the said petition.

In an Order dated June 28, 2012, the RTC dismissed the case for lack of jurisdiction. It noted that by petitioner's own allegations and admissions, respondents Baculio and New PPI Corporation are not owners of the two subject lots and the building. Due to the absence of intra-corporate relations between the parties, it ruled that the case does not involve an intra-corporate controversy cognizable by it sitting as a Special Commercial

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[4] Section 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[5] Section 5. *Notice of Hearing* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Court. It also held that there is no more necessity to discuss the other issues raised in the motion to dismiss, as well as the motion to vacate order, for lack of jurisdiction over the case.

Petitioner filed a motion for reconsideration of the Order dated June 28, 2012, which the RTC denied for lack of merit.[6] Hence, this petition for review on *certiorari.*

Petitioner raises a sole question of aw in support of its petition:

A.

THE REGIONAL TRIAL COURT COMMITTED A MANIFEST ERROR OF LAW AND ACTED IN A MANNER CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE IN DISMISSING THE PETITION ON THE GROUND OF LACK OF JURISDICTION.[7]

Petitioner contends that its petition for injunction with damages is an ordinary civil case correctly filed with the RTC which has jurisdiction over actions where the subject matter is incapable of pecuniary estimation. However, petitioner claims that through no fault on its part, the petition was raffled to Branch 149 of the Makati RTC, a designated Special Commercial Court tasked to hear intra-corporate disputes.

Petitioner notes that R.A. 8799 merely transferred the Securities and Exchange Commission's jurisdiction over cases enumerated under Section 5 of P.D. No. 902-A to the courts of general jurisdiction or the appropriate Regional Trial Court, and that there is nothing in R.A. 8799 or in A.M. No. 00-11-03-SC which would limit or diminish the jurisdiction of those RTCs designated as Special Commercial Courts. Petitioner stresses that such courts shall continue to participate in the raffle of other cases, pursuant to OCA Circular No. 82-2003 on Consolidation of Intellectual Property Courts with Commercial Court. It insists that for purposes of determining the jurisdiction of the RTC, the different branches thereof (in case of a multiple sala court) should not

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[6] *Rollo*, 49.

[7] *Id.* at 33.

be taken as a separate or compartmentalized unit. It, thus, concludes that the designation by the Supreme Court of Branch 149 as a Special Commercial Court did not divest it of its power as a court of general jurisdiction.

Petitioner also submits that prior to the issuance of the Order setting the case for hearing on April 24, 2012, the Presiding Judge of Branch 149 had already determined from the averments in the petition that it is an ordinary civil action and not an intra-corporate matter; thus, he should have referred it back to the Executive Judge or the Office of the Clerk of Court for re-raffle to other branches of the RTC, instead of calendaring it for hearing or dismissing it.

For public respondents Superintendent Ricardo C. Pedrigon and Fire Chief Superintendent Santiago E. Laguna, the OSG avers that the petition for review on *certiorari* should be denied for lack of merit. It points out that petitioner failed to exhaust administrative remedies, *i.e.,* appeal the revocation of the building and occupancy permits with the Department of Public Works and Highways *(DPWH)* Secretary, pursuant to Section 307 of the National Building Code *(Presidential Decree No. 1096);* hence, the filing of a petition for injunction with damages is premature and immediately dismissible for lack of cause of action.

The OSG further argues that even if the case is remanded back to the RTC, the same will not prosper due to procedural and substantive defects, and will only further clog the trial court's dockets, for the following reasons: (l) petitioner failed to implead an indispensable party, namely, the DPWH Secretary to whom the power to reinstate the building permit and the occupancy permit is lodged; (2) with regard to the occupancy permit and the "water sprinkler" clearance, they cannot be issued without a building permit; and (3) the said clearance cannot also be issued due to lack of certification from either the Building Official or Tandem, the structural engineers personally hired by petition, that the structural integrity of Concorde Condominium Building can withstand the necessary damage and load that would be caused by the installation of the water sprinkler system.

For their part, respondents Baculio and New PPI Corporation aver that the petition filed before the RTC should be dismissed for lack of proper verification. They likewise assert that Branch 149 has no jurisdiction over the same petition because (l) such case is not an intra-corporate controversy; (2) petitioner failed to exhaust administrative remedies which is a condition precedent before filing such case; (3) the subject building is a threat to the safety of members of petitioner themselves and of the public in general; (4) the two lots allegedly owned by petitioner are both registered in the name of New PPI Corporation; and (5) the engineering firm hired by petitioner could not even guarantee the building's structural capacity.

Meanwhile, respondent Asian Security & Investigation Agency claims that petitioner's allegations against it are already moot and academic because it had already terminated its security contract with respondents New PPI Corporation and Baculio, and pulled out its guards from petitioner's premises. At any rate, it manifests that it is adopting as part of its Comment the said respondents' Comment/Opposition to the petition for review on *certiorari.*

Respondent Office of the Building Official of Makati City, represented by Engineer Mario V. Badillo, likewise contends that the petition for review on *certiorari* should be dismissed for these reasons: (1) that petitioner failed to exhaust administrative remedies which is a mandatory requirement before filing the case with the RTC of Makati City; (2) that Branch 149, as a Special Commercial Court, has jurisdiction over the said case because it is not an intra-corporate controversy; and (3) petitioner's building is old and dilapidated, and ocular inspections conducted show that several violations of the National Building Code were not corrected, despite several demands and extensions made by the Building Official.

The petition is impressed with merit.

In resolving the issue of whether Branch 149 of the Makati RTC, a designated Special Commercial Court, erred in dismissing the petition for injunction with damages for lack of jurisdiction over the subject matter, the Court is guided by the rule "that

jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein."[8]

As a rule, actions for injunction and damages lie within the jurisdiction of the RTC, pursuant to Section 19 of Batas Pambansa Big. 129, otherwise known as the Judiciary Reorganization Act of 1980, as amended by R.A. 7691:[9]

> Sec. 19. *Jurisdiction in civil cases.* Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> (1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation;
>
> x x x x x x x x x
>
> (6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising x x x judicial or quasi-judicial functions;
>
> x x x x x x x x x
>
> (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the above-mentioned items exceeds Four hundred thousand pesos (₱400,000.00).

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[8] *Padlan v. Dinglasan,* GR. No. 180321, March 20, 2013, 694 SCRA 91, 98-99.

[9] *BPI v. Hong, et al.,* 682 Phil. 66, 73 (2012).

Meanwhile, Section 6 (a) of P.D. No. 902-A empowered the SEC to issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it exercises original and exclusive jurisdiction,[10] to wit:

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.[11]

However, jurisdiction of the SEC over intra-corporate cases was transferred to Courts of general jurisdiction or the appropriate Regional Trial Court when R.A. No. 8799 took effect on August 8, 2000. Section 5.2 of R.A. No. 8799 provides:

SEC. 5.2 The Commission's jurisdiction over all cases enumerated under Section 5 or Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided,* that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall

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[10] *Id.* at 74.

[11] Sec. 5, P.D. No. 902-A.

retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

In *GD Express Worldwide N.V, et al. v. Court of Appeals (4th Div.) et al.,*[12] the Court stressed that Special Commercial Courts are still considered courts of general jurisdiction which have the power to hear and decide cases of all nature, whether civil, criminal or special proceedings, thus:

x x x Section 5.2 of R.A. No. 8799 directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCC can focus only on a particular subject matter.

The designation of certain RTC branches to handle specific cases is nothing new. For instance, pursuant to the provisions of R.A. No. 6657 or the Comprehensive Agrarian Reform Law, the Supreme Court has assigned certain RTC branches to hear and decide cases under Sections 56 and 57 of R.A. No. 6657.

The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has not in anyway limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.[13]

In *Manuel Luis C. Gonzales and Francis Martin D. Gonzales v. GJH Land, Inc. (formerly known as S.J. Land Inc.), Chang Hwan Jang a.k.a. Steve Jang, Sang Rak Kim, Mariechu N. Yap and Atty. Roberto P. Mallari II,*[14] the Court *en banc,* voting 12-1,[15] explained why transfer of jurisdiction over cases

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[12] 605 Phil. 406 (2009).

[13] *Id.* at 418-419.

[14] G.R. No. 202664, November 10, 2015.

[15] Penned by Perlas-Bernabe, *J.*, with Sereno, *C.J.*, Carpio, Velasco Jr., Peralta, Bersamin, Del Castillo, Villarama Jr., Reyes, and Jardeleza, *JJ.,*

enumerated in Section 5 of P.D. 902-A was made to the RTCs in general, and not only in favor of particular RTC branches *(Special Commercial Courts),* to wit:

As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction. Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction,** unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court. In *Lozada v. Bracewell,* it was recently held that **the matter of whether the RTC resolves an issue in the exercise of its general Jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction**.

Pertinent to this case is RA 8799 which took effect on August 8, 2000. By virtue of said law, jurisdiction over cases enumerated in Section 5 of Presidential Decree No. 902-A was transferred from the Securities and Exchange Commission (SEC) to **the RTCs, being courts of general jurisdiction**. Item 5.2, Section 5 of RA 8799 provides:

SEC. 5. *Powers and Functions of the Commission.—*

x x x x x x x x x

5.2 **The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Courtt: *Provided,* that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases**. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Emphasis supplied)

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concurring; Leonardo-de Castro, *J.*, concurring in the result; Brion and Mendoza, *JJ.,* on leave; Perez, *J.* with dissenting opinion; and Leonen, *J.* with separate concurring opinion.

The legal attribution of **Regional Trial Court as courts of general jurisdiction** stems from Section 19 (6) Chapter II of Batas Pambansa Bilang (BP) 129, known as "The Judiciary Reorganization Act of 1980:"

> Section 19. *Jurisdiction in civil cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> x x x x x x x x x
>
> (6) 1n all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions: . . .

As enunciated in *Durisol Philippines, Inc. v. CA*:

> The regional trial court, formerly the court of first instance, is a court of general jurisdiction. All cases, the jurisdiction over which is not specifically provided for by law to be within the jurisdiction of any other court, fall under the jurisdiction of the regional trial court.

To clarify, the word "or" in Item 5.2, Section 5 of RA 8799 was intentionally used by the legislature to particularize the fact that the phrase "the Courts of general jurisdiction" is equivalent to the phrase "the appropriate Regional Trial Court." In other words, the jurisdiction of the SEC over the cases enumerated under Section 5 PD 902-A was transferred to the courts of general jurisdiction, that is to say (or, otherwise known as), the proper Regional Trial Courts. This interpretation is supported by San Miguel Corp. *v*. Municipal Council, wherein the Court held that:

> [T]he word "or" may be used as the equivalent of "that is to say" and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word.

Further, as may be gleaned from the following excerpt of the Congressional deliberations:

> Senator [Raul S.] Roco:
>
> x x x The first major departure is as regards the Securities and Exchange Commission. The Securities and Exchange Commission has been authorized under this proposal to reorganize itself. As an administrative agency, we strengthened it and at the same time we take away the quasi-judicial functions.

> **The quasi-judicial functions are not given back to the court of general jurisdiction — The Regional Trial Court,** except for two categories of cases.
>
> In the case of corporate disputes, only those that are now submitted for final determination of the SEC will remain with the SEC. So, all those cases, both memos of the plaintiff and the defendant, that have been submitted for resolution will continue. At the same time cases involving rehabilitation, bankruptcy, suspension of payments and receiverships that were filed before June 30, 2000 will continue with the SEC. In other words, we are avoiding the possibility, upon approval of this bill, of people filing cases with the SEC, in manner of speaking, to select their court.
>
> x x x (Emphasis supplied)

Therefore, one must be disabused of the notion that the transfer of jurisdiction was made only in favor of particular RTC branches, and not the RTCs in general.

Having clearly settled that as courts of general jurisdiction, the designated Special Commercial Courts and the regular RTCs are both conferred by law the power to hear and decide civil cases in which the subject of the litigation is incapable of pecuniary estimation, such as an action for injunction, the Court will now examine the material allegations in the petition for injunction with damages, in order to determine whether Branch 149 of the Makati RTC has jurisdiction over the subject matter of the case.

In its petition for injunction with damages, Concorde Condominium, Inc. *(CCI),* by itself and comprising the unit owners of Concorde Condominium Building, alleged that:

> **8. CCI is the duly constituted Corporation or Association which owns the common areas in the project that comprises: (a) Lot 1 where the condominium stands and Lot 2 which serves as the parking lot for the benefit of the unit owners; and (b) Concorde Condominium Building ("the building") that was developed by Pulp and Paper Distributors, Inc. (now, allegedly [as claimed by respondent Baculio], the "New PPI Corp.").**

8.1 Petitioner's ownership of both the two (2) lots and the building (except only the units specifically owned by unit owners) is undisputable, as can be clearly gleaned in the following provisions of the Master Deed with Declaration of Restrictions ("Master Deed"), as well as the Amended By-laws of petitioner Concorde Condominium, Inc.

x x x x x x x x x

8.4 At any rate, considering that the condominium corporation (herein petitioner) had already been established or incorporated many years ago, and that the Developer (or any subsequent transferor) had already sold the units in the building to the present unit owners/members, it therefore follows that Developer had thereby lost its beneficial ownership over Lots 1 and 2 in favor of herein petitioner.

9. **Unfortunately, PPI, as developer and engaging in unsound real estate business practice, altered the condominium plan to segregate a lot (Lot 2) from the common areas and fraudulently cause the issuance of a separate title thereof in the name of PPI.**

10. CCI has questioned said fraudulent act of PPI in Housing and Land Use Regulatory Board (HLURB) Case No. REM-050500-10982 entitled "Concorde Condominium, Incorporated *vs*. Pulp and Paper, Inc. *et al.*" The same case was elevated on appeal to the HLURB Board of Commissioners in a case entitled "Concorde Condominium, Incorporated, complainant *vs*. Pulp and Paper, Inc., *et al*., respondents, *vs*. Landmark Philippines Incorporated, *et al.,* Intervenors." In both cases, the HLURB ruled in favor of CCI.

11. PPI did not anymore appeal the aforementioned decision of the HLURB Board of Commissioners to the Office of the President, hence, the decision as against PPI is already final and executory.

x x x x x x x x x

12. Although HLURB has already decided that CCI or all the unit owners have vested rights over the subject lots, recent events have compelled petitioner to urgently seek from this Honorable Court the reliefs prayed for in the instant case, such as the immediate issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against respondents.

x x x x x x x x x

14. At present, a certain Augusto H. Baculio (respondent herein), by himself and on behalf of New PPI Corp., deliberately, actively and with patent bad faith misrepresents and misleads the public and certain government offices/agencies that the lot where the building stands and the lot which serves as parking area are owned by New PPI Corp.

x x x x x x x x x

14.1 In a letter dated 31 January 20 I1, respondent Augusto Baculio, on behalf of New PPI Corp., representing themselves as owners of the above-mentioned lots, requested from the Makati Fire Station that the building be subjected to ocular inspection, x x x.

x x x x x x x x x

14.3 On 12 August 2011, respondent Augusto H. Baculio, with the same misrepresentation, sent another letter to respondent Supt. Ricardo C. Perdigon, City Fire Marshal of Makati requesting for verification or inspection of Concorde, x x x.

x x x x x x x x x

14.4 Worth noting in the aforementioned letter of respondent Baculio dated 12 August 2011 x x x is that, not only did he misrepresent that he or New PPI Corp. owns the two lots, but he likewise openly misrepresented that he owns the building, x x x and even requested *"x x x to address its 'demolition'* as the Concorde is already 40 years old."

x x x x x x x x x

14.7 In a letter dated 07 September 2011, respondent Supt. Ricardo C. Perdigon forwarded or elevated to respondent F/C Supt. Santiago E. Laguna, Regional Director of the Bureau of Fire Protection — NCR the matter about Concorde Condominium Building.

x x x x x x x x x

14.8 On 21 October 2011, CCI sent a letter to respondent F/C Supt. Santiago E. Laguna, informing the latter of the misrepresentations of respondents Augusto Baculio and New PPI Corp.

x x x x x x x x x

14.9 The misrepresentation of respondents Baculio and New PPI Corp. did not stop there. On 17 November 2011, Mr. Baculio requested from Meralco for the cutting off of electricity in Concorde Condominium Building, apparently with the misrepresentation that he owns the building.

x x x x x x x x x

14.14 Moreover, on 7 March 2012, one of the unit owners in the building, Sister Lioba Tiamson, OSB, sought the assistance and intervention of Honorable Mayor Jejomar Erwin S. Binay, Jr. when Concorde received a letter dated 17 February 2012 from respondent Engr. Nelson B. Morales informing Concorde of the revocation of the building and occupancy permits even if the period of sixty (60) days to comply has not yet lapsed.

x x x x x x x x x

16. Moreover, sometime in November 2011, petitioner and its unit owners noted that security guards from Asian Security and Investigation Agency have stationed themselves on rotation basis 7 days a week/24 hours a day, within the perimeter of the building. Upon inquiry of one of the administration personnel, it was discovered that they were hired by respondent August H. Baculio/New PPI Corp.

x x x x x x x x x

16.5 The presence of respondent security agency and its security guards within the perimeter of the building poses threat to and sows serious fear and anxiety to the unit owners. Thus, they should be ordered to leave the premises.

17. Respondent Baculio and New PPI Corp.'s misleading, false, baseless and unauthorized acts of claiming ownership over the subject lots and building are clear violation of the rights of petitioner and its unit owners to maintain their undisturbed ownership, possession and peaceful enjoyment of their property. Hence, should be immediately estopped, restrained and permanently enjoined.

18. Moreover, respondents Baculio and New PPI Corp., by deceit and misrepresentation, are surreptitiously attempting to

dispossess petitioner of Concorde building to the extent of using the instrumentality of the government to achieve this purpose.

19. Worse, respondent Baculio and New PPI Corp. by writing letters to Makati City Engineering Department, are pushing for the demolition ofthe building which they do not even own.

20. Surprisingly, respondent Engr. Nelson B. Morales has been responding to and acting upon the above-mentioned letters being sent by respondent Baculio despite the latter being a mere impostor and has no legal personality whatsoever with regard to the matters concerning the lots and Concorde Condominium Building.

x x x x x x x x x

> **20.9 It is therefore necessary that respondent Engr. Nelson Morales be enjoined from entertaining and acting upon the letters of respondent Baculio.**
>
> **20.10 Respondent Eng. Morales should be immediately restrained from implementing the revocation of petitioner's building and occupancy permit.**
>
> **20.11 Respondent Engr. Morales should also be immediately restrained from ordering the possible demolition of the building, as the building is structurally sound and stable, and does not pose any safety risks to occupants and passers-by.**

x x x x x x x x x

21. Respondents Supt. Ricardo C. Perdigon and F/C Supt. Santiago E. Laguna have likewise been responding to and acting upon the above-mentioned letters being sent by respondent Baculio despite the latter being a mere impostor and has no legal personality whatsoever with regard to matters concerning the building.

22. Moreover, respondents Supt. Ricardo C. Perdigon and F/C Supt. Santiago E. Laguna unjustifiably refused, and continuously refuses to issue the necessary permit for the contractor x x x engaged by petitioner to be able to commence with the installation of a fire sprinkler system and to correct other fire safety deficiencies in the building.

> 22.1 Thus, it is certainly ironic that the Bureau of Fire Protection headed by said respondents x x x issued compliance

order on petitioner to correct fire safety deficiencies, and yet, they refused to issue the necessary work permit to the contractor hired by petitioner.

22.2 Hence, respondents Supt. Perdigon md F/C Supt. Laguna should be directed to issue the necessary permit to the contractor engaged by petitioner.[16]

The concept of an action for injunction, as an ordinary civil action, was discussed in *BPI v. Hong, et al.*[17] as follows:

An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding. In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory, may issue.

There is no doubt that the petition filed before the RTC is an action for injunction, as can be gleaned from the allegations made and reliefs sought by petitioner, namely: (1) to enjoin respondents Baculio and New PPI Corporation from misrepresenting to the public, as well as to private and government offices/agencies, that they are the owners of the disputed lots and Concorde Condominium Building, and from pushing for the demolition of the building which they do not even own; (2) to prevent respondent Asian Security and Investigation Agency from deploying its security guards within the perimeter of the said building; and (3) to restrain respondents Engr. Morales, Supt. Perdigon and F/C Supt. Laguna from responding to and acting upon the letters being sent by Baculio, who is a mere impostor and has no legal personality with regard to matters concerning the revocation of building and occupancy permits, and the fire safety issues of the same building.

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[16] *Rollo,* pp. 173-191. (Emphasis added)

[17] *Supra* note 9.

Applying the *relationship test*[18] and the *nature of the controversy test*[19] in determining whether a dispute constitutes an intra-corporate controversy, as enunciated in *Medical Plaza Makati Condominium Corporation v. Cullen,*[20] the Court agrees with Branch 149 that Civil Case No. 12-309 for injunction with damages is an ordinary civil case, and not an intra-corporate controversy.

A careful review of the allegations in the petition for injunction with damages indicates no intra-corporate relations exists between the opposing parties, namely (1) petitioner condominium corporation, by itself and comprising all its unit owners, on the one hand, and (2) respondent New PPI Corporation which Baculio claims to be the owner of the subject properties, together with the respondents Building Official and City Fire Marshal or Makati City, the Regional Director of the Bureau of Fire Protection, and the private security agency, on the other hand. Moreover, the petition deals with the conflicting claims of ownership over the lots where Concorde Condominium Building stands and the parking lot for unit owners, which were developed by Pulp and Paper Distributors, Inc. (now claimed by respondent Baculio as the New PPI Corporation), as well as the purported violations of the National Building Code which resulted in the revocation

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[18] An intra-corporate controversy is one which pertains to any of the following relationship: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. Thus, under the relationship test, the existence or any of the above intra-corporate relations makes the case intra-corporate.

[19] Under the *nature of the controversy test,* "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved.

[20] G.R.No. 181416, November 11, 2013, 709 SCRA 110.

of the building and occupancy permits by the Building Official of Makati City. Clearly, as the suit between petitioner and respondents neither arises from an intra-corporate relationship nor does it pertain to the enforcement of their correlative rights and obligations under the Corporation Code, and the internal and intra-corporate regulatory rules of the corporation, Branch 149 correctly found that the subject matter of the petition is in the nature of an ordinary civil action.

The Court is mindful of the recent guideline laid down in the recent case of *Manuel Luis C. Gonzales and Francis Martin D. Gonzales v. GJH Land, Inc. (formerly known as S.J. Land Inc.), Chang Hwan Jang a.k.a. Steve Jang, Sang Rak Kim, Mariechu N. Yap and Atty. Roberto P. Mallari II*,[21] to wit:

> For further guidance, the Court finds it apt to point out that the same principles apply to the inverse situation of ordinary civil cases filed before the proper RTCs but wrongly raffled to its branches designated as Special Commercial Courts. In such a scenario, the ordinary civil case should then be referred to the Executive Judge for re-docketing as an ordinary civil case; thereafter, the Executive Judge should then order the raffling of the case to all branches of the same RTC, subject to limitations under existing internal rules, and the payment of the correct docket fees in case of any difference. Unlike the limited assignment/raffling of a commercial case only to branches designated as Special Commercial Courts in the scenarios stated above, the re-raffling of an ordinary civil case in this instance to all courts is permissible due to the fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the imprimatur of statutory law, *i.e.,* Batas Pambansa Bilang (BP 129). To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's exercise of jurisdiction. This designation was not made by statute but only by an internal Supreme Court rule under its authority to promulgate rules governing matters of procedure and its constitutional mandate to supervise the administration of all courts and the personnel thereof. Certainly, an internal rule promulgated by the Court cannot go beyond the

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[21] G.R. No. 202664, November 10, 2015.

commanding statute. But as a more fundamental reason, the designation of Special Commercial Courts is, to stress, merely an incident related to the court's exercise of jurisdiction, which, as first discussed, is distinct from the concept of jurisdiction over the subject matter. The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.[22]

It is apt to note, however, that the foregoing guideline applies only in a situation where the ordinary civil case filed before the proper RTCs was "wrongly raffled" to its branches designated as Special Commercial Courts, which situation does not obtain in this case. Here, no clear and convincing evidence is shown to overturn the legal presumption that official duty has been regularly performed when the Clerk of Court of the Makati RTC docketed the petition for injunction with damages as an ordinary civil case — not as a commercial case — and, consequently, raffled it among all branches of the same RTC, and eventually assigned it to Branch 149. To recall, the designation of the said branch as a Special Commercial Court by no means diminished its power as a court of general jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings. There is no question, therefore, that the Makati RTC, Branch 149 erred in dismissing the petition for injunction with damages, which is clearly an ordinary civil case. As a court of general jurisdiction, it still has jurisdiction over the subject matter thereof.

In view of the above discussion, the Court finds no necessity to delve into the other contentions raised by the parties, as they should be properly addressed by the Makati RTC, Branch 149 which has jurisdiction over the subject matter of the petition for injunction with damages.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Order dated June 28, 2012 and Resolution dated September 20, 2012 issued by the Regional Trial Court of Makati City, Branch 149, in Civil Case No. 12-309, are hereby

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[22] Citations omitted.

REVERSED and **SET ASIDE**. Civil Case No. 12-309 is **REINSTATED** in the docket of the same branch which is further **ORDERED** to resolve the case with reasonable dispatch.

This Decision is immediately executory.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 206758. February 17, 2016]

MARICEL S. NONAY, *petitioner, vs.* **BAHIA SHIPPING SERVICES, INC., FRED OLSEN LINES and CYNTHIA MENDOZA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN CASES WHERE A PETITION FOR *CERTIORARI* IS FILED WITHIN THE 60-DAY PERIOD BUT AFTER THE EXPIRATION OF THE 10-DAY PERIOD UNDER THE 2011 NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE, THE COURT OF APPEALS (CA) CAN GRANT THE PETITION AND MODIFY, NULLIFY AND REVERSE A DECISION OR RESOLUTION OF THE NLRC ON THE GROUND OF GRAVE ABUSE OF DISCRETION.—** Payment of the judgment award in labor cases does not always render a petition for certiorari filed before the Court of Appeals, or a petition

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 15, 2016.

for review on certiorari filed before this court, moot and academic. A similar issue was decided in *Eastern Shipping Lines, Inc., et al. v. Canja*. In *Eastern Shipping*, the Decision of the National Labor Relations Commission became final and executory and was satisfied during the pendency of the Petition for Review on Certiorari filed before the Court of Appeals. The Court of Appeals modified the Decision of the NLRC. x x x This court held that: x x x ***in cases where a petition for certiorari is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC***. x x x [The Court] discussed in *Leonis Navigation Co., Inc., et al. v. Villamater;* x x x The CA could grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion [amounting to excess or lack of jurisdiction,] by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; x x x *[T]he decision or resolution of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision or resolution never became final and executory.*

2. **ID.; CIVIL PROCEDURE; APPEALS; QUESTIONS OF LAW DISTINGUISHED FROM QUESTIONS OF FACT; WHETHER THE CA ERRED IN FINDING GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC IS A QUESTION OF LAW.—** The difference between a question of fact and a question of law was discussed in *Century Iron Works, Inc. v. Bañas*: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. x x x [Here,] the main issue raised by petitioner is whether she is entitled to total and permanent disability benefits based on the factual findings of the labor tribunals; [and] whether the Court of Appeals erred in finding grave abuse of discretion on the part of the National

Labor Relations Commission. x x x The resolution of the issues raised by petitioner entails a review of applicable laws and not whether the alleged facts are true.

3. **LABOR AND SOCIAL LEGISLATION; 2000 POEA STANDARD EMPLOYMENT CONTRACT; WORK-RELATED ILLNESS; ILLNESSES NOT LISTED IN SECTION 32 OF THE CONTRACT ARE DISPUTABLY PRESUMED AS WORK-RELATED.—** Considering that petitioner was hired in 2009, the 2000 POEA Standard Employment Contract applies. The 2000 POEA Standard Employment Contract defines work-related illness as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied. x x x Adenomyoma is not included in the list of occupational diseases under the POEA Standard Employment Contract; however, Section 20(B)(4) provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related."

4. **ID.; ID.; OCCUPATIONAL DISEASES; CONDITIONS FOR COMPENSABILITY IN CASE OF DISABILITY OR DEATH.—** Section 32-A of the POEA Standard Employment Contract provides: **Section 32-A Occupational Diseases** For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer.

5. **ID.; ID.; ID.; CLAIM FOR DISABILITY BENEFITS; REQUISITES.—** To grant petitioner's claim for disability benefits, the following requisites must be present: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease[s] or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable. This court has also recognized that in cases

involving claims for disability benefits, the nature of the employment need not be the only cause of the seafarer's illness. In *Dayo v. Status Maritime Corporation*, this court [ruled: x x x] It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had. While the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work onboard the vessel and the illness contracted or aggravated.

6. **ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; PRESENT IF AS A RESULT OF THE INJURY OR SICKNESS THE EMPLOYEE IS UNABLE TO PERFORM ANY GAINFUL OCCUPATION FOR A CONTINUOUS PERIOD EXCEEDING 120 DAYS EXCEPT WHERE SUCH INJURY OR SICKNESS REQUIRES MEDICAL ATTENDANCE BEYOND 120 DAYS BUT NOT TO EXCEED 240 DAYS.—** The determination of whether a disability is permanent and total is provided under Article 192(c)(1) of the Labor Code: [Thus, x x x] The following disabilities shall be deemed total and permanent: 1. Temporary total disabilities lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules: x x x [Thus] **Rule X – TEMPORARY TOTAL DISABILITY** . . . **SECTION 2. Period of entitlement.** (a) The income benefit shall be paid beginning on the first day of such disability. *If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid.* However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. In *C.F. Sharp Crew Management, Inc. v. Taok*, this court clarified: x x x The company-designated physician was justified in not issuing a medical certificate on whether petitioner was fit to work after the lapse of 120 days because petitioner's treatment required more than 120 days. Petitioner's illness

could not be automatically considered total and permanent simply because there was no certification that she is fit to work after 120 days.

7. **ID.; ID.; COMPENSATION AND BENEFITS; THIRD-DOCTOR REFERRAL IN CASE OF CONFLICTING FINDINGS OF COMPANY-DESIGNATED PHYSICIAN AND PERSONAL PHYSICIAN; FINDINGS OF THE FORMER PREVAIL IN NON-OBSERVANCE OF THIRD-DOCTOR REFERRAL UNLESS CLEARLY BIASED IN FAVOR OF EMPLOYER.—** The POEA Standard Employment Contract provides for a procedure to resolve the conflicting findings of a company-designated physician and personal physician, specifically: **SECTION 20. COMPENSATION AND BENEFITS (B) (3):** If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. In *Transocean Ship Management (Phils.), Inc., et al. v. Vedad*, the reason for the third-doctor referral provision in the POEA Standard Employment Contract is that: In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above. x x x Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA Standard Employment Contract. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.

APPEARANCES OF COUNSEL

R.C. Carrera Law Office for petitioner.
Carag Jamora Somera & Villareal Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

In some cases, illnesses that are contracted by seafarers and are not listed as occupational diseases under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract may be disputably presumed to be work-related or work-aggravated. The relation of the disease contracted to the work done by the seafarer, or that the work aggravated the disease, must be sufficiently proven by substantial evidence. Otherwise, the claim for disability benefits cannot be granted.

Bahia Shipping Services, Inc., (Bahia Shipping), for and on behalf of Fred Olsen Cruise Lines, Ltd., hired Maricel S. Nonay (Nonay) in 2008.[1] From July 16, 2008 to May 15, 2009, Nonay worked on board the M/S Braemer as Casino Attendant/Senior Casino Attendant.[2] Nonay was re-hired by Bahia Shipping as Casino Attendant on June 8, 2009[3] for a period of nine (9) months.[4] She re-boarded the M/S Braemer on August 1, 2009.[5]

When she boarded the M/S Braemer, she was assigned to work "as an Assistant Accountant (Night Auditor) until January 20, 2010."[6] On January 21, 2010, she was assigned to work as Senior Casino Attendant.[7]

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[1] *Rollo*, p. 135, Maricel S. Nonay's Memorandum.

[2] *Id*. at 49, Court of Appeals Decision.

[3] *Id*.

[4] *Id*. at 135-136, Maricel S. Nonay's Memorandum.

[5] *Id*. at 136.

[6] *Id*. at 49, Court of Appeals Decision.

[7] *Id*.

Around the middle of February 2010, Nonay "experienced profuse and consistent bleeding[,] extreme dizziness and . . . difficulty in breathing."[8] She went to the ship's clinic and was given medication.[9] The next day, Nonay experienced severe headache. She again went to the ship's clinic, and was prescribed a different medication, which worsened her headache. Thus, she stopped taking the medicine.[10]

Nonay's bleeding intensified. She was later advised by the ship's physician to rest. However, her condition did not improve so she went to a clinic in Barbados. A transvaginal ultrasound conducted on Nonay revealed that she had two (2) ovarian cysts. She returned to the ship and was assigned to perform light duties.[11]

On March 20, 2010, Nonay was medically repatriated. Bahia Shipping referred her to the company-designated physician at the Metropolitan Medical Center in Manila.[12]

On March 22, 2010, Nonay "was placed under the care of an obstetrician-gynecologist[,]"[13] also a company-designated physician. The obstetrician-gynecologist diagnosed Nonay with "Abnormal Uterine Bleeding Secondary to a[n] Adenomyosis with Adenomyoma."[14] Nonay underwent endometrial dilatation and curettage as part of her treatment.[15]

Nonay was not declared fit to work by the end of the 120-day period from March 20, 2010, the date of her repatriation,[16]

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[8] *Id*. at 136, Maricel S. Nonay's Memorandum.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 50, Court of Appeals Decision.

[14] *Id*. at 137, Maricel S. Nonay's Memorandum.

[15] *Id*.

[16] *Id*.

but she was declared "fit to resume sea duties"[17] within the 240-day period.[18]

On September 8, 2010, she filed a Complaint "for payment of disability benefit, medical expenses, moral and exemplary damages and attorney's fees."[19] She sought to claim permanent disability benefits based on the collective bargaining agreement she signed.[20]

The Labor Arbiter ruled in favor of Maricel S. Nonay.[21] The dispositive portion of the Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered as follows:
>
> Ordering respondents to pay complainant her permanent disability compensation in accordance with the CBA in the amount of US$80,000.00; and 10% of the award by way of attorney's fees.
>
> SO ORDERED.[22] (Citation omitted)

Bahia Shipping appealed to the National Labor Relations Commission, which affirmed the Labor Arbiter's Decision.[23] The National Labor Relations Commission ruled as follows:

> **WHEREFORE**, premises considered, the appeal of the respondents-appellants is hereby DENIED and the Decision of Labor Arbiter Valentin Reyes dated January 18, 2011 is hereby AFFIRMED.
>
> SO ORDERED.[24] (Emphasis in the original, citation omitted)

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[17] *Id*. at 51, Court of Appeals Decision.

[18] *Id*. Nonay was declared "fit to resume sea duties" on October 26, 2010.

[19] *Id*.

[20] *Id*. at 14, Petition for *Certiorari*. The Petition states that she has an "IBF-AMOSUP/IMEC TCCC CBA[.]"

[21] *Id*. at 51, Court of Appeals Decision.

[22] *Id*. at 52.

[23] *Id*.

[24] *Id*.

Bahia Shipping moved for reconsideration, but the Motion was denied.[25]

Bahia Shipping filed a Petition for Certiorari before the Court of Appeals arguing that the National Labor Relations Commission committed grave abuse of discretion when it ruled that "[Nonay's] illness is work-related despite substantial evidence to the contrary[.]"[26]

The Court of Appeals granted the Petition for Certiorari and held that the National Labor Relations Commission gravely abused its discretion in affirming the Labor Arbiter's ruling.[27] It found that Nonay failed to provide substantial evidence to prove her allegation that her illness is work-related.[28] The Court of Appeals gave greater weight to the findings of the company-designated physician holding that the company-designated physician "had acquired detailed knowledge and was familiar with [Nonay's] medical condition."[29]

The dispositive portion of the Court of Appeals Decision[30] states:

> **WHEREFORE**, the present petition is **GRANTED**. The Resolutions dated September 28, 2011 and November 29, 2011 of public respondent National Labor Relations Commission are **NULLIFIED and SET ASIDE.** The complaint of private respondent Maricel S. Nonay is **DISMISSED**.

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[25] *Id*.

[26] *Id*. at 53.

[27] *Id*. at 76-77.

[28] *Id*. at 70.

[29] *Id*. at 74.

[30] *Id*. at 48-78. The Petition for *Certiorari* was docketed as CA-G.R. SP No. 123163 and was decided on February 12, 2013. The Decision was penned by Associate Justice Fernanda Lampas Peralta (Chair) and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan of the Tenth Division.

For humanitarian considerations, petitioners are **ORDERED** to pay private respondent financial assistance in the amount of ₱50,000.00.

SO ORDERED.[31] (Emphasis in the original)

Nonay moved for reconsideration, but the Motion was denied by the Court of Appeals in the Resolution[32] dated April 12, 2013.

While the Petition for Certiorari was pending before the Court of Appeals, Bahia Shipping paid Nonay the amount of ₱3,780,040.00 pursuant to the final and executory Decision of the National Labor Relations Commission.[33] Thus, the Court of Appeals also stated in its April 12, 2013 Resolution that:

> The manifestation of petitioners in their comment that "they paid the amount of Php 3,780,040.00 to Private Respondent based on the judgment award of the Third Division of Public Respondent NLRC," with their prayer "that Private Respondent be ordered to return to Petitioners the judgment award less the Php 50,000.00 humanitarian award granted by this Honorable Court in her favor," is merely noted. The same pertains to execution and must be threshed out before the labor arbiter at the execution stage when the Court's judgment becomes final and executory.[34] (Citation omitted)

On June 5, 2013, Nonay filed a "Petition for Certiorari"[35] before this court, but the contents of her Petition indicated that it was a petition for review on certiorari under Rule 45 of the Rules of Court.[36]

In the Resolution[37] dated July 17, 2013, this court required the respondents to comment on the Petition within 10 days from notice.

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[31] *Id*. at 77.

[32] *Id*. at 80-81. The Resolution was penned by Associate Justice Fernanda Lampas Peralta (Chair) and concurred in by Associate Justices Angelita A. Gacutan and Victoria Isabel A. Paredes of the Special Tenth Division.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 8-46.

[36] *Id*. at 8.

[37] *Id*. at 82.

Bahia Shipping filed a Motion for Extension of Time to File Comment[38] on September 13, 2013. The Comment[39] was filed on October 14, 2013.

Nonay filed her Reply[40] on January 30, 2014, which was noted by this court in the Resolution[41] dated March 12, 2014. In the same Resolution, this court required the parties to submit their memoranda within 30 days from notice.[42]

Nonay argues that the National Labor Relations Commission did not gravely abuse its discretion when it found that her illness was work-related and work-aggravated since more than 120 days lapsed without any declaration from the company-designated physician that she was fit to work.[43] Thus, her illness was compensable.[44]

She also argues that she underwent the required pre-employment medical examination and was certified fit to work. The fit-to-work certification shows that when she boarded the vessel, she was in perfect health. However, she was repatriated for medical reasons. Thus, her illness developed in the course of her work onboard the M/S Braemer.[45]

Nonay points out that the test in claims for disability benefits is "not the absolute certainty that the nature of employment . . . caused the illness of the worker."[46] Instead, the test only requires "the probability that the nature of employment of the worker . . . caused or contributed in the enhancement, development[,]

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[38] *Id*. at 83-85.

[39] *Id*. at 88-101.

[40] *Id*. at 107-130.

[41] *Id*. at 107-130.

[42] *Id*. at 133.

[43] *Id*. at 144.

[44] *Id*. at 145, Maricel S. Nonay's Memorandum.

[45] *Id*.

[46] *Id*. at 147.

and deterioration of such illness."[47] Further, "in case of doubt as to the compensability of an ailment, the doubt is always settled in favor of its compensability."[48] It is not the gravity of the injury that is compensated but the loss of earning capacity.[49]

She alleges that she can no longer obtain employment and has lost her capacity to earn income as a seafarer.[50] Thus, she is entitled to disability compensation as provided under the Collective Bargaining Agreement.[51] She alleges that under her Collective Bargaining Agreement, "all . . . illnesses of a medically repatriated seafarer . . . are presumed work related."[52]

Nonay cites the 2000 Philippine Overseas Employment Agency-Standard Employment Contract (POEA Standard Employment Contract), suppletory to the Collective Bargaining Agreement, which provides that "all other illnesses acquired by the seafarers onboard the vessel including those not listed as occupational disease are presumed work related and work aggravated."[53]

She further argues that the company-designated physician is biased in favor of Bahia Shipping.[54] On the other hand, her personal physician, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto) is "an independent general medical practitioner and he has no special relationship to petitioner other than doctor-patient relationship only."[55]

She claims that the Petition filed before the Court of Appeals should have been considered moot and academic since the judgment award was fully settled.[56]

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[47] *Id*.

[48] *Id*. at 148.

[49] *Id*. at 149.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 128, Maricel S. Nonay's Reply.

[53] *Id*. at 150, Maricel S. Nonay's Memorandum.

[54] *Id*. at 151.

[55] *Id*. at 153.

[56] *Id*. at 158.

On the other hand, Bahia Shipping argues that the Petition should be dismissed because petitioner raised questions of facts that are not allowed in petitions for review on certiorari.[57]

Bahia Shipping also argues that Nonay is not entitled to total and permanent disability benefits because she "was declared fit to work within the 240-day period[.]"[58] She filed the Complaint before the Labor Arbiter without complying with the mandated procedure that the medical assessment be referred to a third doctor in the event that the company-designated physician and the personal physician differ in their findings, as in this case.[59]

In addition, Nonay's personal physician, Dr. Jacinto, did not show how prolonged walking and standing could result to adenomyoma.[60] Nonay consulted Dr. Jacinto only once. Further, he is an orthopedic surgeon and not an obstetrician-gynecologist.[61]

We resolve the following issues:

First, whether the satisfaction of the judgment award rendered the Petition for Certiorari before the Court of Appeals moot and academic;

Second, whether the Petition should be dismissed for allegedly raising questions of fact;

Third, whether the Court of Appeals erred in granting the Petition for Certiorari and setting aside the Decision of the National Labor Relations Commission;

Fourth, whether petitioner Maricel S. Nonay is entitled to full disability benefits under the Norwegian Collective Bargaining Agreement;

Fifth, whether the employee has the burden to prove to the court that the illness was acquired or aggravated during the

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[57] *Id*. at 166-167, Bahia Shipping's Memorandum.

[58] *Id*. at 179.

[59] *Id*. at 172.

[60] *Id*. at 176-177.

[61] *Id*. at 177.

period of employment before the disputable presumption that the illness is work-related or work-aggravated arises; and

Lastly, whether petitioner is permanently and totally disabled because the company-designated physician failed to certify that she is fit to work after the lapse of 120 days.

This court denies the Petition and affirms the Decision of the Court of Appeals.

I

Payment of the judgment award in labor cases does not always render a petition for certiorari filed before the Court of Appeals, or a petition for review on certiorari filed before this court, moot and academic. A similar issue was decided in *Eastern Shipping Lines, Inc., et al. v. Canja*.[62] In *Eastern Shipping*, the Decision of the National Labor Relations Commission became final and executory and was satisfied during the pendency of the Petition for Review on Certiorari filed before the Court of Appeals.[63] The Court of Appeals modified the Decision of the National Labor Relations Commission.[64] Eastern Shipping filed a Petition for Review before this court, arguing that the final and executory Decision of the National Labor Relations Commission cannot be modified by the Court of Appeals.[65] This court held that:

> Section 14, Rule VII of the 2011 NLRC Rules of Procedure provides that decisions, resolutions or orders of the NLRC shall become final and executory after ten (10) calendar days from receipt thereof by the parties, and entry of judgment shall be made upon the expiration of the said period. In *St. Martin Funeral Homes v. NLRC*, however, it was ruled that judicial review of decisions at the NLRC may be sought via a petition for *certiorari* before the CA under Rule 65 of

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[62] G.R. No. 193990, October 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/193990.pdf> [Per *J.* Peralta, Third Division].

[63] *Id*. at 3-4.

[64] *Id*.

[65] *Id*. at 4.

the Rules of Court; and under Section 4 thereof, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. ***Hence, in cases where a petition for certiorari is filed after the expiration of the 10-day period under the 2011 NLRC Rules of Procedure but within the 60-day period under Rule 65 of the Rules of Court, the CA can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC***.[66] (Emphasis in the original)

Thus, a petition for certiorari assailing a decision of the National Labor Relations Commission is allowed even after the National Labor Relations Commission's Decision has become final and executory, provided that the petition is filed before the expiration of the 60-day reglementary period under Rule 65.

The reason for this rule was discussed in *Leonis Navigation Co., Inc., et al. v. Villamater and/or The Heirs of the Late Catalino U. Villamater, et al.*,[67] where one of the issues was whether the Court of Appeals erred in ruling that final and executory decisions of the National Labor Relations Commission can no longer be questioned.[68] This court discussed:

Further, a petition for certiorari does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.

The CA, therefore, could grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed

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[66] *Id.* at 4-5, *citing Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 845 (2013) [Per *J.* Mendoza, Third Division].

[67] 628 Phil. 81 (2010) [Per *J.* Nachura, Third Division].

[68] *Id*. at 89.

grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. *Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision or resolution never became final and executory.*[69] (Emphasis supplied, citation omitted)

II

The Petition in this case does not raise questions of fact. The difference between a question of fact and a question of law was discussed in *Century Iron Works, Inc. v. Bañas*:[70]

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[71] (Citations omitted)

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[69] *Id*. at 92-93.

[70] G.R. No. 184116, June 19, 2013, 699 SCRA 157 [Per *J*. Brion, Second Division].

[71] *Id*. at 166-167.

Contrary to respondent Bahia Shipping Services, Inc.'s argument, petitioner raised only questions of law. The arguments in this Petition for Review[72] show that petitioner does not question the findings of fact of the labor tribunals and the Court of Appeals. The main issue raised by petitioner is whether she is entitled to total and permanent disability benefits based on the factual findings of the labor tribunals. The other issue raised by petitioner is whether the Court of Appeals erred in finding grave abuse of discretion on the part of the National Labor Relations Commission.

Clearly, the issues raised by petitioner do not require the evaluation of the evidence presented before the labor tribunals. The resolution of the issues raised by petitioner entails a review of applicable laws and not whether the alleged facts are true.

III

To resolve a Rule 45 petition for review of a Court of Appeals decision on a Rule 65 petition for certiorari, the question of law that this court must determine is whether the Court of Appeals properly determined the "presence or absence of grave abuse of discretion."[73]

This court shall determine whether the Court of Appeals was correct in ruling that there was grave abuse of discretion on the part of the National Labor Relations Commission and in granting the Petition for Certiorari filed before the Court of Appeals.

Petitioner's Norwegian Collective Bargaining Agreement provides that:

Article 15 – Death and Disability Insurance

x x x x x x x x x

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[72] Petitioner captioned the petition filed before this court as "Petition for *Certiorari*," but the contents of the petition show that it is a Rule 45 petition for review on *certiorari*.

[73] *Dayo v. Status Maritime Corporation*, G.R. No. 210660, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/210660.pdf> 5 [Per *J.* Leonen, Second Division].

2. Disability:

   A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Owner/Company, regardless of fault, including accidents occurring whilst traveling to and from the Dhip [sic] and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Agreement.[74] (Emphasis supplied)

Petitioner alleges that she "experienced profuse and consistent bleeding . . . felt extreme dizziness and ha[d] difficulty in breathing"[75] but she never alleged any accident that resulted to her illness. Thus, the provision in her collective bargaining agreement is not applicable.

Considering that petitioner was hired in 2009, the 2000 POEA Standard Employment Contract applies.

The 2000 POEA Standard Employment Contract defines work-related illness as:

Definition of Terms:

. . . .

12. Work-Related Illness – any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.

Section 20(B) of the Standard Employment Contract provides:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

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[74] *Rollo*, pp. 62-63, Court of Appeals Decision.

[75] *Id*. at 136, Maricel S. Nonay's Memorandum.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to [sic] repatriated.

   However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

   If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

x x x x x x x x x

Adenomyoma is not included in the list of occupational diseases under the POEA Standard Employment Contract; however, Section 20(B)(4) provides that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related."

Section 32-A of the POEA Standard Employment Contract provides:

SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

To grant petitioner's claim for disability benefits, the following requisites must be present:

(1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease[s] or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[76]

This court has also recognized that in cases involving claims for disability benefits, the nature of the employment need not be the only cause of the seafarer's illness. In *Dayo v. Status Maritime Corporation*,[77] this court reiterated the rule on compensability of illnesses as follows:

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his

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[76] *Jebsen Maritime, Inc. v. Ravena*, G.R. No. 200566, September 17, 2014, 735 SCRA 494, 511–512 [Per *J.* Brion, Second Division].

[77] G.R. No. 210660, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/210660.pdf> [Per *J.* Leonen, Second Division].

work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[78]

While the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work onboard the vessel and the illness contracted or aggravated.

In *Quizora v. Denholm Crew Management (Phils.), Inc.*,[79] Quizora argued that he did not have the burden to prove that his illness was work-related because it was disputably presumed by law.[80] This court ruled that Quizora "cannot simply rely on the disputable presumption provision mention in Section 20 (B) (4) of the 2000 POEA-SEC."[81] This court further discussed that:

At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

> For disability to be compensable under **Section 20 (B) of the 2000 POEA-SEC**, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; **it must also**

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[78] *Id*. at 8, *citing Magsaysay Maritime Services, et al. v. Laurel*, 707 Phil. 210, 225 (2013) [Per *J.* Mendoza, Third Division].

[79] 676 Phil. 313 (2011) [Per *J.* Mendoza, Third Division].

[80] *Id*. at 320.

[81] *Id*. at 326.

> **be shown** that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.
>
> The 2000 POEA-SEC defines "work-related injury" as "injury[ies] resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[82] (Emphasis in the original)

The ruling in *Quizora* was restated in *Ayungo v. Beamko Shipmanagement Corporation*:[83]

> In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.[84] (Citation omitted)

The rule on the burden of proof with regard to claims for disability benefits was also reiterated in *Dohle-Philman Manning Agency, Inc., et al. v. Heirs of Gazzingan*:[85]

> [T]he 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-

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[82] *Id*. at 327, *citing Magsaysay Maritime Corporation, et al. v. National Labor Relations Commission (Second Division), et al.*, 630 Phil. 352, 362-363 (2010) [Per *J.* Brion, Second Division].

[83] G.R. No. 203161, February 26, 2014, 717 SCRA 538 [Per *J.* Perlas-Bernabe, Second Division].

[84] *Id*. at 548-549.

[85] G.R. No. 199568, June 17, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/199568.pdf> [Per *J.* Del Castillo, Second Division].

connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.[86] (Citation omitted)

The rule that a seafarer must establish the relation between the illness and the nature of work was applied in *Teekay Shipping Philippines, Inc. v. Jarin*.[87] In *Teekay Shipping,* Exequiel O. Jarin (Jarin) was hired as Chief Cook onboard the M.T. Erik Spirit. During the term of his employment contract, he was diagnosed with rheumatoid arthritis. Jarin was able to finish his contract and upon return to the Philippines, he immediately reported to Teekay Shipping's office. He was referred to Dr. Christine O. Bocek, a company-designated physician.[88] Jarin was diagnosed with "moon facies and bipedal edema secondary to steroid intake, [r]heumatoid arthritis, resolving and upper respiratory tract infection."[89] He was subsequently referred to Dr. Dacanay, another company-designated physician,[90] who issued a medical report stating that "Jarin's rheumatoid arthritis was not work-related[.]"[91] Jarin filed a complaint for payment of total and permanent disability benefits before the National Labor Relations Commission.[92] He argued in his position paper that his rheumatoid arthritis was related to his work as Chief Cook. He explained that as Chief Cook, he would spend several hours inside the ship's freezer to check the food inventory and to prepare the food for the day. After spending several hours inside the freezer, he would cook dinner. Jarin summarized that the nature of his work exposed him to extremely cold and extremely hot temperatures.[93] This court ruled that Jarin

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[86] *Id*. at 10.

[87] G.R. No. 195598, June 25, 2014, 727 SCRA 242 [Per *J*. Reyes, First Division].

[88] *Id*. at 244.

[89] *Id*.

[90] *Id*. at 244-245.

[91] *Id*. at 245.

[92] *Id*. at 247.

[93] *Id*. at 253-254.

sufficiently proved the relation between his work as Chief Cook and his rheumatoid arthritis, thus granting his claim for disability benefits.[94]

In this case, however, petitioner was unable to present substantial evidence to show the relation between her work and the illness she contracted. The record of this case does not show whether petitioner's adenomyoma was pre-existing; hence, this court cannot determine whether it was aggravated by the nature of her employment. She also failed to fulfill the requisites of Section 32-A of the 2000 POEA-SEC for her illness to be compensable, thus, her claim for disability benefits cannot be granted.

Petitioner argues that her illness is the result of her "constantly walking upward and downward on board the vessel carrying loads"[95] and that she "acquired her illness on board respondents' vessel during the term of her employment contract with respondents as Casino [Attendant][.]"[96]

However, petitioner did not discuss the duties of a Casino Attendant. She also failed to show the causation between walking, carrying heavy loads, and adenomyoma. Petitioner merely asserts that since her illness developed while she was on board the vessel, it was work-related.

In *Cagatin v. Magsaysay Maritime Corporation, et al.*,[97] Cagatin was hired as a cabin steward.[98] He alleged that his injuries were due to the hazardous tasks he was made to perform, which were beyond the job description in his contract.[99] This

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[94] *Id*. at 253-256.

[95] *Rollo*, p. 21, Petition for *Certiorari*.

[96] *Id*. at 137, Maricel S. Nonay's Memorandum.

[97] G.R. No. 175795, June 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/175795.pdf> [Per *J*. Peralta, Third Division].

[98] *Id*. at 2.

[99] *Id*. at 8.

court held that since Cagatin did not allege what the tasks of a cabin steward were, there was no means by which the court could determine whether the tasks he performed were, indeed, hazardous.[100]

In the same manner, this court has no means to determine whether petitioner's illness is work-related or work-aggravated since petitioner did not describe the nature of her employment as Casino Attendant.

Petitioner also argues that since the company-designated physician did not declare her fit to work after 120 days, she is thus entitled to total and permanent disability benefits.[101]

The determination of whether a disability is permanent and total is provided under Article 192(c)(1) of the Labor Code:

Art. 192. Permanent total disability.

. . . .

(c) The following disabilities shall be deemed total and permanent:

1. Temporary total disabilities lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

. . . .

Rule VII, Section 2(b), and Rule X, Section 2(a) of the Amended Rules on Employees' Compensation provides:

RULE VII – BENEFITS

. . . .

Section 2. Disability. . . .

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

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[100] *Id.* at 16.

[101] *Rollo*, pp. 144-145, Maricel S. Nonay's Memorandum.

. . . .

RULE X – TEMPORARY TOTAL DISABILITY

. . . .

Section 2. Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. *If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid.* However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied)

In *C.F. Sharp Crew Management, Inc. v. Taok*,[102] this court clarified the apparent conflict between Section 20(B)(3) of the POEA Standard Employment Contract and Rule X, Section 2 of the Amended Rules on Employees' Compensation:

While it may appear under Paragraph 3, Section 20 of the POEA-SEC and Article 192(c)(1) of the Labor Code that the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with Section 2, Rule X of the AREC indicates otherwise. *That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days*. . . .

. . . .

Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and

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[102] G.R. No. 193679, July 18, 2012, 677 SCRA 296 [Per *J.* Reyes, Second Division].

permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[103]

The company-designated physician was justified in not issuing a medical certificate on whether petitioner was fit to work after the lapse of 120 days because petitioner's treatment required more than 120 days. Petitioner's illness could not be automatically considered total and permanent simply because there was no certification that she is fit to work after 120 days.

IV

The Court of Appeals did not err when it held that the Complaint should have been dismissed due to lack of cause of action.[104]

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[103] *Id*. at 313-315.

[104] *Rollo*, p. 66, Court of Appeals Decision.

It found that petitioner's treatment would exceed 120 days, as follows:

Firstly, she was prescribed and given monthly Luprolex injection for six (6) months. The first injection was administered on March 30, 2010, twelve (12) days after her repatriation, and was completed on August 27, 2010. Secondly, she underwent endometrial dilatation and curettage on July 22, 2010. Thirdly, from July 28, 2010 up to September 6, 2010, she was treated for bacterial vaginosis and candidiasis. Fourthly, she underwent repeat transvaginal ultrasound on September 28, 2010 for re-evaluation of her medical condition and was last seen by the OB-GYNE on October 21, 2010.

It bears stressing that if the employer's failure to make a declaration on the fitness or disability of the seafarer is due to the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days. Thus, the filing by private respondent of the complaint for permanent disability compensation benefits on September 8, 2010, or 174 days after she was medically repatriated on March 18, 2010, was premature. As such, the labor arbiter should have dismissed at the first instance the complaint for lack of cause of action.[105] (Citations omitted)

The Court of Appeals also determined that petitioner held the position of Night Auditor from August 1, 2009 to January 20, 2010.[106] She assumed the position of Casino Attendant on January 21, 2010. Petitioner argued that it was her duties as Casino Attendant that caused her to fall ill. When she experienced profuse bleeding, she had only been a Casino Attendant for at least a month.[107] The Court of Appeals held that because of this short span of time, then the presentation of evidence showing the relation between her work as Casino Attendant and her illness becomes all the more crucial.[108]

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[105] *Id*.

[106] *Id*. at 49.

[107] *Id*. at 136. Maricel S. Nonay's Memorandum. Nonay alleged that she began to experience bleeding and dizziness around the middle of February 2010.

[108] *Id*. at 71-72, Court of Appeals Decision.

V

There was likewise no error on the part of the Court of Appeals when it gave greater weight to the assessment of the company-designated physician.

The POEA Standard Employment Contract provides for a procedure to resolve the conflicting findings of a company-designated physician and personal physician, specifically:

SECTION 20. COMPENSATION AND BENEFITS

. . . .

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

. . . .

3. . . . .

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Transocean Ship Management (Phils.), Inc., et al. v. Vedad*,[109] the reason for the third-doctor referral provision in the POEA Standard Employment Contract is that:

In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.[110]

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[109] 707 Phil. 194 (2013) [Per *J.* Velasco, Jr., Third Division].

[110] *Id.* at 207.

In *Montierro v. Rickmers Marine Agency Phils., Inc.*,[111] one of the issues that was resolved was "whether it is the opinion of the company doctor or of the personal doctor of the seafarer that should prevail.["][112]

This court held that non-observance of the procedure under Section 20(B)(3) of the POEA Standard Employment Contract would mean that the assessment of the company-designated physician prevails.[113] This rule was reiterated in *Veritas Maritime Corporation, et al. v. Gepanaga, Jr.*:[114]

Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. Consequently, the Court applies the following pronouncements laid down in *Vergara*:

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer **disagrees** with the company-designated physician's assessment, the opinion of a **third doctor** may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, **while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an**

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[111] G.R. No. 210634, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/210634.pdf> [Per *C.J.* Sereno, First Division].

[112] *Id*. at 5.

[113] *Id*. at 7, *citing Vergara v. Hammonia Maritime Services, Inc., et al.*, 588 Phil. 895, 914 (2008) [Per *J.* Brion, Second Division].

[114] G.R. No. 206285, February 4, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/206285.pdf> [Per *J.* Mendoza, Second Division]. See also *Gargallo v. DOHLE Seafront Crewing (Manila), Inc., et al.*, G.R. No. 215551, September 16, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/215551.pdf> 10 [Per *J.* Perlas-Bernabe, First Division].

> **agreed procedure.** Unfortunately, the petitioner did not avail of this procedure; hence, **we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.** x x x.

Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."[115] (Emphasis in the original, citation omitted)

In the earlier landmark case of *Philippine Hammonia Ship Agency, Inc. v. Dumadag*,[116] to disregard the third-doctor referral provision in the POEA Standard Employment Contract without any explanation is grave abuse of discretion because it is tantamount to failure to uphold the law between the parties.[117]

However, the rule that the company-designated physician's findings shall prevail is not a hard and fast rule. This court has recognized that the company-designated physician may be biased in favor of the employer. In *HFS Philippines, Inc., et al. v. Pilar*,[118] this court upheld the findings of the seafarer's personal physician because it was supported by the medical records of the seafarer.[119] This court also noted that the company-designated physician downgraded the seafarer's illness:[120]

The company-designated physician declared respondent as having suffered a major depression but was already cured and therefore fit to work. On the other hand, the independent physicians stated that

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[115] *Veritas Maritime Corporation, et al. v. Gepanaga, Jr.*, G.R. No. 206285, February 4, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/206285.pdf> 10 [Per *J.* Mendoza, Second Division].

[116] G.R. No. 194362, June 26, 2013, 700 SCRA 53 [Per *J.* Brion, Second Division].

[117] *Id*. at 66.

[118] 603 Phil. 309 (2009) [Per *J.* Corona, First Division].

[119] *Id*. at 317-320.

[120] *Id*. at 320.

respondent's major depression persisted and constituted a disability. More importantly, while the former totally ignored the diagnosis of the Japanese doctor that respondent was also suffering from gastric ulcer, the latter addressed this. The independent physicians thus found that respondent was suffering from chronic gastritis and declared him unfit for work.[121]

Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA Standard Employment Contract. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.

In this case, petitioner was referred by respondent to an obstetrician-gynecologist,[122] while Dr. Jacinto, petitioner's personal physician, is an orthopaedic surgeon.[123] It is not disputed that petitioner was diagnosed as suffering from Abnormal Uterine Bleeding secondary to Adenomyosis with Adenomyoma.[124] Thus, between the two physicians, the obstetrician-gynecologist is more qualified to assess petitioner's condition.

Dr. Jacinto simply stated that "conditions started at work and aggravated by the performance of her duties characterized as prolonged standing and walking"[125] but did not discuss the causal connection between prolonged standing and walking and the development of petitioner's illness.

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[121] *Id*.

[122] *Rollo*, p. 50, Court of Appeals Decision.

[123] *Id*. at 71.

[124] *Id*. at 50, Court of Appeals Decision; 134, Maricel S. Nonay's Memorandum; and 164, Bahia Shipping's Memorandum.

[125] *Id*. at 71, Court of Appeals Decision.

Further, the company-designated physician was able to closely monitor petitioner's condition from the time she was repatriated in March 2010 until the date of her last check-up in October 2010.[126]

On the other hand, Dr. Jacinto merely evaluated the results of "petitioner's medication, treatment and examination[.]"[127] Petitioner did not allege how she was examined and treated by her personal physician, and how her personal physician arrived at the conclusion that she is unfit to work as seafarer.

Monana v. MEC Global Shipmanagement[128] involved a claim for disability benefits. The company-designated physician and the personal physician had different findings.[129] This court affirmed the Decision of the Court of Appeals, which gave greater weight to the findings of the company-designated physician because "as between the company-designated doctor who has all the medical records of petitioner for the duration of his treatment and as against the latter's private doctor who merely examined him for a day as an outpatient, the former's finding must prevail."[130]

Considering that the company-designated physician closely monitored petitioner from March 2010 until she completed her treatment,[131] and also considering that petitioner did not observe the third-doctor referral provision, no error can be attributed to the Court of Appeals when it gave greater weight to the findings of the company-designated physician.

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[126] *Id*. at 73.

[127] *Id*. at 25, Petition for *Certiorari*.

[128] G.R. No. 196122, November 12, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/196122.pdf> [Per *J*. Leonen, Second Division].

[129] *Id*. at 2-3.

[130] *Id*. at 10.

[131] *Id*. at 73, Court of Appeals Decision.

VI

On a final note, the POEA Standard Employment Contract was amended in 2010.[132] One amendment provides that a disability grading shall no longer depend on the number of days of treatment, specifically:

> **SECTION 20. COMPENSATION AND BENEFITS**
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> . . . .
>
> 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> **The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.** (Emphasis in the original)

WHEREFORE, premises considered, the petition is **DENIED** and the Decision of the Court of Appeals in CA-G.R. SP No. 123163 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Mendoza,JJ.,* concur.

Brion, J., on leave.

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[132] POEA Memorandum Circular No. 10, Series of 2010. Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

SECOND DIVISION

[G.R. No. 207389. February 17, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FEDERICO DE LA CRUZ *y* SANTOS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; QUALIFYING/AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; NOT APPRECIATED IN THE ABSENCE OF EVIDENCE THAT THE KILLING WAS PRECEDED BY CALM JUDGMENT TO CARRY OUT THE CRIME.—** [T]he aggravating/qualifying circumstance of evident premeditation did not attend the killing of the deceased Corazon because there is no evidence at all that the killing was preceded by cool thought and reflection upon the decision to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.

2. **REMEDIAL LAW; EVIDENCE; ALIBI; REQUIRES PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF THE CRIME.—** For the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission. Physical impossibility refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

3. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT AS ATTACK COMES SUDDENLY WITHOUT CHANCE TO RETALIATE OR REPEL THE SAME.—** "There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." "The essence of treachery is that the attack comes without a

warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape." In this case, appellant's sudden attack on Corazon inside her apartment amply demonstrates that treachery was employed in the commission of the crime. x x x When appellant grabbed her neck and stabbed her in the back, Corazon was afforded no chance to defend herself and retaliate or repel the attack. Although she struggled, such was not enough to protect or extricate her from the harm posed by appellant.

4. **ID.; ID.; DAMAGES; AWARDS FOR CIVIL INDEMNITY AND FOR MORAL DAMAGES ARE ₱75,000 AND AWARD FOR EXEMPLARY DAMAGES IS ₱30,000.—** Based on prevailing jurisprudence, the awards for civil indemnity and for moral damages in favor of Corazon's heirs should be increased from ₱50,000.00 to ₱75,000.00. The CA also correctly upgraded the award of exemplary damages from ₱25,000.00 to ₱30,000.00.

5. **ID.; ID.; ID.; PROPER FORMULA FOR THE COMPUTATION OF RECOVERABLE DAMAGES FOR LOSS OF EARNING CAPACITY.—** The proper formula for the computation of recoverable damages for loss of earning capacity is as follows: Net Earning Capacity = life expectancy x [gross annual income - living expenses] = 2/3 [80-age of the victim at time of death] x [gross annual income - 50% of gross annual income].

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the September 24, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04645.

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[1] CA *rollo,* pp. 115-128; penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.

The CA Decision affirmed with modification the August 2, 2010 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 41, in Criminal Case No. 02-206926 finding the appellant Federico De La Cruz *y* Santos guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua.*

Proceedings before the Regional Trial Court

Before the RTC of Manila, Branch 41, appellant was charged with Murder for stabbing Corazon Claudio *y* Nadera (Corazon) to death on March 27, 2002. The Information states:

> That on or about March 27, 2002, in the City of Manila, Philippines, the said accused, did then and there [willfully], unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one Corazon Claudio *y* Nadera by then and there stabbing the latter with a knife on the different parts of her body, thereby inflicting upon the said Corazon Claudio *y* Nadera mortal stab wounds which were the direct and immediate cause of her death.
>
> Contrary to law.[3]

Arraigned thereon the said appellant entered a negative plea. After a pre-trial conference, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the following witnesses: Joan De Leon Sabilano (Joan), SPO1 Paul Dennis Javier (SPO1 Javier), Dr. Romeo T. Salen (Dr. Salen), Carmelita Ongoco (Carmelita), and Lourdes Evangelista (Lourdes). Their collective testimonies tended to establish these facts –

In the early morning of March 27, 2002, while Corazon and her live-in partner Joan were having breakfast inside their room in a rented apartment at No. 187 Pedro Alfonso Balasan Street,

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[2] Records, pp. 283-287; penned by Acting Presiding Judge Teresa P. Soriaso.

[3] *Id.* at 1.

Balut, Tondo, Manila, appellant suddenly barged into the room and pulled out a *balisong* (fan knife). Without warning, he grabbed Corazon by her neck and stabbed her in the back, causing her to fall down on the bed.[4] Although she had fallen down on the bed, appellant continued to stab Corazon on the left side of her body, and near her heart.

Joan tried to stop appellant from further hurting Corazon. She placed her right hand between the two and screamed, *"Tama na, Tama na!"*[5] But Joan's attempt to stop appellant did not work. While trying to stop appellant's attacks, Joan's fingers on her right hand were sliced by appellant's *balisong*. After stabbing Corazon, appellant fled the crime scene. Joan ran outside and called for help. Corazon was brought to the Tondo Medical Center but she was declared dead on arrival.

Joan testified that even before the stabbing incident, she was already familiar with appellant; that two weeks before the stabbing incident, the now deceased Corazon told her (Joan) that appellant had threatened to kill her (Corazon) because he suspected that she (Corazon) was having an affair with his wife, a teacher at the T. Paez Elementary School where Corazon also worked as a janitress. According to Joan, Corazon was a lesbian.[6]

SPO1 Javier, an investigator assigned at the Homicide Section of the Western (Manila) Police District, testified that on March 27, 2002, he received a phone call from Kiddie Quiling, a security guard of the Tondo General Hospital, who informed him that a dead-on-arrival victim of stab wounds had been brought there. He proceeded to the hospital and took pictures of Corazon's body which sustained multiple stab wounds.

From the Tondo General Hospital, SPO1 Javier proceeded to the crime scene. He testified that the room that greeted his eyes was in disarray, with fresh blood stains all over the place, especially "on the cemented flooring." This, to him, indicated

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[4] TSN, April 19, 2006, p. 12.

[5] *Id.* at 15.

[6] *Id.* at 22.

that there had been some kind of fight or struggle.[7] He recovered a cellphone at the crime scene, which was identified by the wife of the appellant as belonging to the latter. SPO1 Javier thereafter filed a report on the stabbing incident.

Dr. Salen, the medico-legal officer who conducted the postmortem examination and autopsy on the body of Corazon, testified that the victim sustained four stab wounds caused by a sharp-bladed instrument; two stab wounds were in Corazon's front and two at her back. Dr. Salen averred that the stab wounds at the back were superficial, whereas the stab wounds in front were fatal as these pierced Corazon's heart, lungs, and large intestines.

The prosecution also presented Carmelita, sister of Corazon, to prove the expenses incurred by Corazon's heirs. The defense stipulated that on the occasion of Corazon's death, her heirs incurred actual damages in the amount of ₱74,800.00. The defense also stipulated that at the time of her death, Corazon was receiving a monthly salary in the amount of ₱5,610.00.

The fifth witness presented by the prosecution was Lourdes, Guidance Counselor at the T. Paez Elementary School. This witness testified that a few days after Corazon was killed, appellant contacted her (Lourdes) and told her that he was angry with his wife because he suspected her of having an affair with Corazon.[8] This witness also testified that appellant told her that he would surrender to the proper authorities "soon."[9] She (Lourdes) answered appellant that there was no truth to his suspicion but appellant refused to believe her.

Version of the Defense

Denying the charges against him, appellant interposed alibi as a defense. He alleged that he was in Orion, Bataan from March 26, 2002 to April 3, 2002 to attend the Holy Week

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[7] TSN, June 21, 2006, p. 9.

[8] TSN, August 26, 2009, p. 9.

[9] *Id.* at 12.

Salubong on invitation of his co-worker Manny Alonzo.[10] He added that he learned about the case against him only on April 11, 2002. He said that he was arrested in Lubao, Pampanga on November 8, 2005, at the instance of his wife who was furious at him when she learned that he had married another woman before he married her.

Ruling of the Regional Trial Court

On August 2, 2010 the RTC of Manila, Branch 41 rendered judgment finding appellant guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and accordingly sentenced him to suffer the penalty of *reclusion perpetua.* The RTC appreciated the qualifying circumstance of treachery, having found the assault against the now deceased victim sudden and unexpected, affording the latter no chance to defend herself.

Even though alleged in the Information, the RTC did not appreciate evident premeditation as an aggravating circumstance because of the prosecution's failure to show that appellant had deliberately planned Corazon's killing.

The dispositive part of the RTC's Decision reads:

> WHEREFORE, the prosecution having proved the guilt of the accused FEDERICO DE LA CRUZ *y* SANTOS Alias "Boy," beyond reasonable doubt of the crime of Murder, the qualifying circumstance of treachery being attendant; and there being no other aggravating or mitigating circumstance, the Court hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, with all the accessory penalties of the law, and to indemnify the heirs of the victim the amounts of: (1) ₱74,800.00 as actual damages; (2) ₱50,000.00 as civil indemnity; (3) ₱25,000.00 as exemplary damages; (4) ₱50,000.00 as moral damages; and ₱721,670.00 for the unearned income of the victim.
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> SO ORDERED.[11]

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[10] TSN, October 20, 2008, pp. 4-7.

[11] Records, p. 287.

Ruling of the Court of Appeals

On appeal, the CA agreed with the RTC that appellant killed Corazon with treachery. The CA gave full credence to Joan's testimony: first, with respect to her positive identification of the appellant as the actual killer of Corazon; and second, as regards her narration of the mode or manner as to how the killing was done or executed. The RTC accepted her description of the *balisong* assault against Corazon that early morning of March 27, 2002 as "sudden and unexpected" equating this with treachery, which qualified Corazon's killing as murder. The CA held that although there were some inconsistencies in Joan's testimony, these inconsistencies were however on minor details that did not at all impair her credibility.

The CA rejected appellant's denial and alibi, not only because he utterly failed to substantiate his claim that he was in Orion, Bataan on the day the crime was committed but also because he failed to prove that it was physically impossible for him to be at the crime scene when the crime was committed that early morning of March 27, 2002.

The CA decretally disposed as follows:

> WHEREFORE, premises considered, the instant Appeal is hereby DENIED. The Decision dated 02 August 2010 of Branch 41, Regional Trial Court of Manila, is hereby AFFIRMED with MODIFICATION to read as follows:
>
>> WHEREFORE, the prosecution having proved the guilt of the accused FEDERICO DE LA CRUZ *y* SANTOS Alias "Boy," beyond reasonable doubt of the crime of Murder, the qualifying circumstance of treachery being attendant; and there being no aggravating or mitigating circumstance, the Court hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, with all the accessory penalties of the law, and to indemnify the heirs of the victim the amounts of: (1) ₱74,800.00 as actual damages; (2) ₱50,000.00 as civil indemnity; (3) ₱30,000.00 as exemplary damages; (4) ₱50,000.00 as moral damages; and (5) ₱695,415.60 [representing] the unearned income of the victim.
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>> SO ORDERED.[12]

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[12] CA *rollo*, p. 127.

Assignment of Errors

In his Appellant's Brief,[13] appellant contends that he should have been acquitted of the indictment against him, his guilt not having been proven beyond reasonable doubt. He assails Joan's credibility and insists that the "circumstances under which she identified the [appellant] as the culprit are highly improbable and contrary to human experience";[14] and that Joan, the lone eyewitness to Corazon's killing, could not have correctly identified him as the author of the crime because he was not facing her (Joan) when Corazon first pointed him to Joan.

Appellant likewise contends that Joan's testimonies are at war with SPO1 Javier's findings; that SPO1 Javier's crime investigation report clearly showed that when he inspected the room where Corazon was killed, it was in disarray indicating that Corazon had put up some kind of fight or struggle. This, appellant says, does not square with Joan's claim that Corazon was unable to move because of the suddenness of the attack and because he had grabbed her neck before stabbing her repeatedly.

Appellant likewise argues that Joan was impelled by ill motive into testifying falsely against him because Corazon had earlier told Joan that he (appellant) had threatened to kill Corazon because he was suspecting that Corazon was having an affair with his wife.

Our Ruling

After a careful review of the records, we find no reason to depart from the uniform findings of the RTC and the CA. Both courts correctly found appellant guilty of murder.

It bears stressing that the Information for murder instituted in this case alleged only two aggravating/qualifying circumstances in support thereof, to wit: evident premeditation and treachery. But, as correctly found by both the RTC and the CA – with which finding we are in full accord – the aggravating/qualifying circumstance of evident premeditation did not attend the killing

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[13] *Id*. at 59-74.

[14] *Id*. at 67.

of the deceased Corazon because there is no evidence at all that the killing was preceded by cool thought and reflection upon the decision to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. In fact, the prosecution here has adduced no evidence at all to show that sufficient time had lapsed before appellant decided or determined to commit the crime; nor that appellant, by some convincing act or action, had indeed clung to his determination to kill the victim; let alone that sufficient time had indeed lapsed or transpired between the decision to kill and its actual execution, to allow appellant time or opportunity to reflect upon the consequences of his act.

We also find no cogent reason to disturb the assessment of the RTC, as affirmed by the CA, that Joan is a credible witness. The records reveal that Joan was able to positively identify appellant as the perpetrator of the crime since she witnessed the stabbing incident from start to finish. Joan was just a few steps away from appellant when he stabbed Corazon to death inside their apartment room. We are convinced that Joan could not have mistaken appellant's identity.

Moreover, an examination of Joan's testimony reveals that her statements are consistent in all material points. Joan testified as follows:

Pros. Go:

Q: What happened after Federico Dela Cruz went inside your house, Madam Witness?

A: He entered our house and he held Corazon Claudio by the neck and stabbed her at the back.

Q: Again, Madam Witness, who stabbed Corazon Claudio?

A: Federico Dela Cruz, sir.

Q: What part of the body of Corazon Claudio [did] accused [stab], Madam Witness?

A: '*Una po sa likod, sumunod po sa tagiliran* (Witness pointing to the left side of her body), *tapos sa may puso tapos sa may bust po* (witness pointing to her left breast, near the heart). *Mga apat na saksak po.'*

Pros. Go:

Q: Madam Witness, how far were you when the accused held the victim by the neck?

A: About two steps, sir. I was beside Corazon Claudio.[15]

We find Joan's testimony credible as the crime was committed in her presence inside their apartment room.

As regards appellant's argument that the testimony of Joan contradicts that of SPO1 Javier, we find the contention unmeritorious.

SPO1 Javier's testimony that the room was in disarray and with bloodstains all over thereby indicating struggle on the part of Corazon does not necessarily contradict the version of Joan. In fact, their testimonies tend to corroborate each other.

That the room was in disarray is only a natural consequence of the stabbing incident that occurred therein. It would be contrary to human experience if Corazon and Joan remained perfectly still and just allowed appellant free hand at stabbing them. In fact, as Joan narrated, Corazon fell down on the bed after the first thrust. Joan tried to parry appellant's attacks to defend Corazon hurting herself in the process. For sure, all these require a modicum of movement from all participants causing disarray inside the room. In any event, assuming that there is any inconsistency, this does not detract us from the fact the Joan positively identified appellant as Corazon's assailant.

Appellant's alibi fails to persuade. For the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission.[16] Physical impossibility refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have

[15] TSN, April 19, 2006, pp. 6-7.

[16] *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 217.

been physically present at the crime scene and its immediate vicinity when the crime was committed.[17]

In this case, appellant failed to satisfy these requirements. He was not able to satisfactorily establish his claims that he was in Orion, Bataan during the time of the commission of the crime and that it was physically impossible for him to be at or near the place of the crime. Aside from his own statement, appellant did not bother to present other witnesses or any other proof to support his defense. His defense of alibi must necessarily fail.

We are likewise convinced that the killing was qualified by treachery. "There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[18] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."[19]

In this case, appellant's sudden attack on Corazon inside her apartment amply demonstrates that treachery was employed in the commission of the crime. Corazon could not have been aware that her life was in imminent danger inside the comforts of her own home. When appellant barged in, Corazon was having coffee with Joan totally unaware that she would be attacked inside the confines of her own house. When appellant grabbed her neck and stabbed her in the back, Corazon was afforded no chance to defend herself and retaliate or repel the attack. Although she struggled, such was not enough to protect or extricate her from the harm posed by appellant. Undoubtedly, the CA correctly held that the crime committed was murder under Article 248 of the RPC in view of the qualifying circumstance of treachery.

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[17] *People v. Bravo,* 695 Phil. 711, 728 (2012), citing *People v. Jacinto*, 661 Phil. 224, 248 (2011).

[18] REVISED PENAL CODE, Art. 14(16).

[19] *People v. Jalbonian*, G.R. No. 180281, July 1, 2013, 700 SCRA 280, 294, citing *People v. De la Cruz*, 626 Phil. 631, 640 (2010).

All told, Corazon was unaware of the imminent danger on her life, and was not in a position to defend herself. Verily, treachery attended the commission of the crime.

Turning now to the awards for civil indemnity, and for actual, exemplary and moral damages made by the CA, we believe that certain modifications are in order. Based on prevailing jurisprudence, the awards for civil indemnity and for moral damages in favor of Corazon's heirs should be increased from ₱50,000.00 to ₱75,000.00.[20] The CA also correctly upgraded the award of exemplary damages from ₱25,000.00 to ₱30,000.00.

This Court likewise sustains the award of actual damages in the amount of ₱74,800.00, which represents actual expenses incurred for the burial of Corazon; indeed the defense agreed to pay this sum during the trial. Nevertheless, this Court must correct the CA's computation relative to the loss of earning capacity. The proper formula for the computation of recoverable damages for loss of earning capacity is as follows:

Net Earning Capacity = life expectancy x [gross annual income - living expenses]
= 2/3 [80-age of the victim at time of death] x [gross annual income - 50% of gross annual income]
= 2/3 [80-49 years] x [₱67,320.00 – ₱33,660.00]
= 20.6666667 x ₱33,660.00
= ₱695,640.00

WHEREFORE, the appeal is **DISMISSED**. The September 24, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04645 finding appellant Federico De La Cruz guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS** that appellant is ordered to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and loss of earning capacity in the amount of ₱695,640.00.

All monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

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[20] *People v. Arbalate*, 616 Phil. 221, 238 (2009).

SO ORDERED.

Carpio (Chairperson), Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on leave.

FIRST DIVISION

[G.R. No. 218867. February 17, 2016]

SPOUSES EDMOND LEE and HELEN HUANG, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PERFECTION OF AN APPEAL; WITHOUT PAYMENT OF DOCKET FEES WITHIN THE PRESCRIBED PERIOD, THE APPEAL IS NOT PERFECTED; HENCE, THE APPELLATE COURT DOES NOT ACQUIRE JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION AND THE DECISION SOUGHT TO BE APPEALED FROM BECOMES FINAL AND EXECUTORY.—** In *Gipa v. Southern Luzon Institute,* citing *Gonzales v. Pe*, the Court clarified the requirement of full payment of docket and other lawful fees under [Section 4, Rule 41 of the Rules of Court] in this wise: [T]he procedural requirement under Section 4 of Rule 41 is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional. It bears stressing that an appeal is not a right, but a mere statutory privilege. An ordinary appeal from a decision or final order of the RTC to the CA must be made within 15 days from notice. And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from. **The requirement of paying the full amount of the appellate docket fees within**

the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory. Further, under Section 1 (c), Rule 50, an appeal may be dismissed by the CA, on its own motion or on that of the appellee, on the ground of the non-payment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41. The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

2. **ID.; ID.; ID.; THE REGIONAL TRIAL COURT PROPERLY DISMISSED THE APPEAL FOR FAILURE TO PROSECUTE, AS IT DID NOT LOSE JURISDICTION OVER THE CASE FOR FAILURE OF THE PARTY TO PERFECT ITS APPEAL BY NOT PAYING THE FULL AMOUNT OF THE PRESCRIBED APPELLATE DOCKET FEES.—** [S]ection 9, Rule 41 of the Rules of Court states: Section 9. *Perfection of appeal; effect thereof.* x x x. **In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of appeals filed in due time and the expiration of the time to appeal of the other parties.** x x x. After a punctilious review of the records of this case, the Court finds that respondent failed to perfect its appeal before the RTC by not paying the full amount of the prescribed appellate docket fees. Consequently, the RTC did not lose jurisdiction over the case and, as a matter of discretion, properly dismissed the appeal for failure to prosecute.

3. **ID.; ID.; A PARTY IS CONSIDERED TO HAVE ABANDONED ITS APPEAL WHEN IT FAILS TO EXERCISE DILIGENCE AND PRUDENCE IN ASCERTAINING THAT THE RECORDS OF THE CASE HAD BEEN TRANSMITTED TO THE APPELLATE COURT AND THAT ITS APPEAL HAD BEEN GIVEN DUE COURSE.—** Further militating against respondent's cause is the fact that almost five (5) years had already lapsed from the time its Notice of Appeal had

been originally given due course by the RTC up to the time the petitioners moved for its dismissal. And yet, respondent failed to pursue its case. In fact, had petitioners not taken any action, the instant case would have continued to languish in the RTC dockets. Besides, even if it were true that respondent had paid the required appellate docket fees in this case, it still failed to exercise diligence and prudence in ascertaining that the records of the case had been transmitted to the CA and that its appeal had been given due course. As it is, respondent miserably neglected its case and may, thus, be considered to have abandoned its appeal. Clearly, the RTC, through Judge Balderama, cannot be faulted for dismissing the appeal for failure to prosecute.

4. **ID.; ID.; ID.; NO COURT COULD EXERCISE APPELLATE JURISDICTION TO REVIEW THE DECISION OF THE REGIONAL TRIAL COURT WHERE THE PARTY FAILED TO PERFECT AN APPEAL WITHIN THE PERIOD FIXED BY LAW.—** That the RTC retained jurisdiction to dismiss the appeal is beyond cavil, as provided under Section 9, Rule 41 x x x. As a result of respondent's failure to perfect an appeal within the period fixed by law, no court could exercise *appellate* jurisdiction to review the RTC decision. To reiterate, perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory. It bears to stress that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. In the light of the foregoing, the CA erred when it found that the RTC committed grave abuse of discretion when it dismissed respondent's appeal for failure to prosecute.

APPEARANCES OF COUNSEL

Abad Abad & Associates for petitioners.
LBP Legal Services Group for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 28, 2015 and the Resolution[3] dated June 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133533 finding grave abuse of discretion on the part of the Regional Trial Court of Balanga City, Bataan, Branch 1 (RTC), sitting as a Special Agrarian Court (SAC) in Civil Case No. 7171, for dismissing the appeal filed by respondent Land Bank of the Philippines (respondent) for failure to prosecute.

The Facts

Petitioners-spouses Edmond Lee and Helen Huang (petitioners) are the registered owners of parcels of land with an aggregate area of 5.4928 hectares (has.) situated in Mambog, Hermosa, Bataan and covered by Transfer Certificate of Title (TCT) No. T-26257 of the Register of Deeds of Bataan (subject property). The subject property was compulsorily acquired by the Department of Agrarian Reform (DAR) in accordance with Republic Act No. (RA) 6657,[4] as amended, otherwise known as the "Comprehensive Agrarian Reform Law of 1988."[5]

DAR offered the sum of ₱109,429.98 as just compensation for the 1.5073-ha. portion of the subject property. Rejecting the valuation, petitioners instead filed the present petition for

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[1] *Rollo*, pp. 12-31.

[2] *Id*. at 36-42. Penned by Associate Justice Socorro B. Inting with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

[3] *Id*. at 44-45.

[4] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," approved on June 10, 1988.

[5] See *rollo*, p. 55.

determination of just compensation against Provincial Adjudicator Erasmo SP. Cruz of the Department of Agrarian Reform Adjudication Board (DARAB) and herein respondent before the RTC, docketed as Civil Case No. 7171.[6]

In defense, respondent claimed that its valuation was based on DAR Administrative Order (AO) No. 11, series of 1994,[7] as amended by DAR AO No. 5, series of 1998.[8] It also contended that petitioners' appraisal was biased.[9]

The RTC Ruling and Subsequent Proceedings

After due proceedings, the RTC, sitting as a SAC, rendered a Decision[10] dated January 17, 2002 rejecting the valuation given by respondent and setting the just compensation for petitioners' 1.5073 has. at ₱250.00 per square meter, or a total amount of ₱3,768,250.00. It took judicial notice of the fact that the lots within the vicinity of the subject property are valued between ₱200.00 to ₱500.00 per square meter.[11]

Respondent's motion for reconsideration[12] was denied in an Order[13] dated June 14, 2002.

Several years later, or sometime in September 2006,[14] petitioners filed a motion for execution of the RTC's January

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[6] See *id.* at 55-56.

[7] Entitled "REVISING THE RULES AND REGULATIONS COVERING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED AS EMBODIED IN ADMINISTRATIVE ORDER NO. 06, SERIES OF 1992," dated September 13, 1994.

[8] Entitled "REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657," dated April 15, 1998.

[9] See *rollo*, p. 57.

[10] *Id.* at 55-60. Penned by Judge Benjamin T. Vianzon.

[11] See *id.* at 59-60.

[12] Not attached to the *rollo*.

[13] *Rollo*, p. 61.

[14] See *id.* at 17.

17, 2002 Decision, alleging that while they received a copy of respondent's Notice of Appeal dated June 19, 2002, upon verification, no such appeal was actually filed before the RTC. Respondent denied petitioners' claim and asserted that it filed a Notice of Appeal in accordance with the rules and has, therefore, perfected its appeal. As such, the RTC's January 17, 2002 Decision was not yet final and executory.[15]

Finding that respondent had perfected its appeal and based on equitable considerations and the highest interest of justice, the RTC, in an Order[16] dated June 7, 2007, gave due course to respondent's appeal and directed that the entire records thereof be transmitted to the CA.

Petitioners moved for reconsideration,[17] which the RTC denied in an Order[18] dated August 27, 2008. The RTC clarified that respondent was able to file its Notice of Appeal within the prescribed period and that a postal money order in the amount of ₱520.00 had been issued by respondent in favor of the Clerk of Court of the RTC of Balanga City, Bataan, representing the payment of the appeal fee.[19]

Almost five (5) years later, or on April 26, 2013, petitioners filed a motion to dismiss[20] the appeal of respondent for failure to prosecute, asseverating that from the time the RTC gave due course to its appeal in 2008, respondent had not made any further action on its appeal, particularly with regard to the payment of the prescribed appeal fees. In its defense, respondent argued that the RTC no longer had jurisdiction to entertain petitioners' motion after its Notice of Appeal had been given due course. It maintained that petitioners' motion should have been filed not before the RTC, but before the CA.[21]

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[15] See *id*. at 62.

[16] *Id*. at 62. Penned by Judge Vianzon.

[17] Not attached to the *rollo*.

[18] *Rollo*, pp. 63-65. Penned by Judge Angelito I. Balderama.

[19] See *id*.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 67.

In its assailed Order[22] dated July 5, 2013, the RTC, through Judge Angelito I. Balderama (Judge Balderama), granted petitioners' motion and accordingly, dismissed respondent's appeal for failure to prosecute. Upon a meticulous inspection of the records, the RTC found that respondent failed to pay the prescribed appeal fees. While it is true that Postal Money Order No. J8353389-390 had been issued by respondent as purported payment therefor, records show that the amount pertaining thereto had not been remitted or credited to the account of the Office of the Clerk of Court of the RTC. According to the Officer-in-Charge (OIC) Clerk of Court of the RTC, Mr. Gelbert Argonza (Mr. Argonza), respondent's failure to pay the appeal fees was the reason why the records of the case were not transmitted to the CA, explaining that proof of payment of the appeal fees is a required attachment that forms part of the records to be transmitted to the CA.[23]

As payment of docket and other legal fees within the prescribed period is both mandatory and jurisdictional, the RTC, therefore, held that respondent's appeal was not duly perfected. As such, it did not lose jurisdiction over the case and, accordingly, pursuant to Section 5,[24] Rule 141 on Legal Fees of the Rules of Court, dismissed respondent's appeal for failure to prosecute.[25]

Respondent's motion for reconsideration[26] was denied in an Order dated December 11, 2013; hence, the matter was elevated

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[22] *Id*. at 66-69A.

[23] See *id*. at 67-68.

[24] Section 5. *Fees to be paid by the advancing party*. – The fees of the clerk of the Court of Appeals, Sandiganbayan and Court of Tax Appeals or of the Supreme Court shall be paid to him at the same time of the entry of the action or proceeding in the court by the party who enters the same. The clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received and the amount received. If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the action or proceedings.

[25] See *rollo*, pp. 68-69A.

[26] Not attached to the *rollo*.

before the CA *via* a petition for *certiorari*, imputing grave abuse of discretion on the part of the RTC in dismissing its appeal.

The CA Ruling

In a Decision[27] dated January 28, 2015, the CA found grave abuse of discretion on the part of the RTC in dismissing respondent's appeal for failure to prosecute, holding that the validity of the latter's appeal had already been passed upon in the RTC's earlier Orders dated June 7, 2007 and August 27, 2008 that gave due course to the appeal and directed the transmittal of the records to the CA. It also ruled that upon the perfection of respondent's appeal, the RTC had already lost jurisdiction over the case. Thus, any orders subsequently issued by the RTC after the filing of respondent's Notice of Appeal on June 19, 2002 were of no force and effect.[28]

Aggrieved, petitioners filed a motion for reconsideration,[29] which the CA denied in a Resolution[30] dated June 5, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in finding grave abuse of discretion on the part of the RTC when it dismissed respondent's appeal for failure to prosecute.

The Court's Ruling

The petition has merit.

Section 4, Rule 41 of the Rules of Court provides:

Section 4. *Appellate court docket and other lawful fees*. – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from,

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[27] *Rollo*, pp. 36-42.

[28] See *id*. at 39-41.

[29] Not attached to the *rollo.*

[30] *Rollo*, pp. 44-45.

the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

In *Gipa v. Southern Luzon Institute*,[31] citing *Gonzales v. Pe*,[32] the Court clarified the requirement of full payment of docket and other lawful fees under the above-quoted rule in this wise:

> [T]he procedural requirement under Section 4 of Rule 41 is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional. It bears stressing that an appeal is not a right, but a mere statutory privilege. An ordinary appeal from a decision or final order of the RTC to the CA must be made within 15 days from notice. And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from. **The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory**. Further, under Section 1 (c), Rule 50, an appeal may be dismissed by the CA, on its own motion or on that of the appellee, on the ground of the non-payment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41. The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.[33] (Emphasis and underscoring supplied)

In relation thereto, Section 9, Rule 41 of the Rules of Court states:

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[31] G.R. No. 177425, June 18, 2014, 726 SCRA 559.

[32] 670 Phil. 597 (2011).

[33] *Gipa v. Southern Luzon Institute*, *supra* note 31, at 570, citing *Gonzales v. Pe*, *id*. at 610-611.

Section 9. *Perfection of appeal; effect thereof.* – A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal. (Emphasis supplied)

After a punctilious review of the records of this case, the Court finds that respondent failed to perfect its appeal before the RTC by not paying the full amount of the prescribed appellate docket fees. Consequently, the RTC did not lose jurisdiction over the case and, as a matter of discretion, properly dismissed the appeal for failure to prosecute.

The Court gives credence to the statement given by the OIC Clerk of Court of the RTC, Mr. Argonza, who, upon meticulous inspection of the records, found that while respondent had indeed issued a postal money order in favor of the Office of the Clerk of Court of the RTC, the amount pertaining thereto was never remitted or received by the court. There being no proof of payment of the required appellate fees, Mr. Argonza explained that the case records cannot be transmitted to the CA and therefore, remained with the RTC. This fact sheds light and lends credibility to petitioners' allegation that they originally attempted to file their motion to dismiss appeal before the CA, which was

unsurprisingly rejected, there being no case docket and court records pertaining to respondent's appeal.[34]

Further militating against respondent's cause is the fact that almost five (5) years had already lapsed from the time its Notice of Appeal had been originally given due course by the RTC up to the time the petitioners moved for its dismissal. And yet, respondent failed to pursue its case. In fact, had petitioners not taken any action, the instant case would have continued to languish in the RTC dockets. Besides, even if it were true that respondent had paid the required appellate docket fees in this case, it still failed to exercise diligence and prudence in ascertaining that the records of the case had been transmitted to the CA and that its appeal had been given due course. As it is, respondent miserably neglected its case and may, thus, be considered to have abandoned its appeal.[35] Clearly, the RTC, through Judge Balderama, cannot be faulted for dismissing the appeal for failure to prosecute.

That the RTC retained jurisdiction to dismiss the appeal is beyond cavil, as provided under Section 9, Rule 41 above-quoted. As a result of respondent's failure to perfect an appeal within the period fixed by law, no court could exercise *appellate* jurisdiction to review the RTC decision.[36] To reiterate, perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory.[37] It bears to stress that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules.[38]

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[34] See *rollo*, p. 23.

[35] See *Pepsi Cola Products (Phils.) v. Patan, Jr.*, 464 Phil. 517, 522-524 (2004).

[36] See *National Power Corporation v. Sps. Laohoo*, 611 Phil. 195, 217 (2009).

[37] *Yalong v. People*, G.R. No. 187174, August 28, 2013, 704 SCRA 195, 204.

[38] *De Leon v. Hercules Agro Industrial Corporation*, G.R. No. 183239, June 2, 2014, 724 SCRA 309, 316.

In the light of the foregoing, the CA erred when it found that the RTC committed grave abuse of discretion when it dismissed respondent's appeal for failure to prosecute. While it is true that the RTC previously gave due course to respondent's Notice of Appeal and declared that the latter had issued a postal money order in payment of the required appellate docket fees, the RTC, however, is not precluded from perusing the records a second or a third time, if only to ensure that all the requirements for perfecting an appeal have been complied with. The Court further notes that if it were true that respondent actually paid the appellate docket fees, it could have easily produced proof of payment if only to dispel any doubts thereon and consequently, prove compliance with the rules on the perfection of appeals. Unfortunately, no such evidence was forthcoming. Indubitably, the dismissal of respondent's appeal was in order, and the RTC's January 17, 2002 Decision, as a result, had attained finality.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 28, 2015 and the Resolution dated June 5, 2015 of the Court of Appeals in CA-G.R. SP No. 133533 are hereby **REVERSED** and **SET ASIDE.** Accordingly, the Orders dated July 5, 2013 and December 11, 2013 of the Regional Trial Court of Balanga City, Bataan, Branch 1, sitting as a Special Agrarian Court, are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 220481. February 17, 2016]

VICTOR S. LIMLINGAN AND EMMANUEL A. LEYCO, *petitioners, vs.* **ASIAN INSTITUTE OF MANAGEMENT, INC.,** *respondent.*

[G.R. No. 220503. February 17, 2016]

ASIAN INSTITUTE OF MANAGEMENT, INC., *petitioner, vs.* **VICTOR S. LIMLINGAN AND EMMANUEL A. LEYCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES AS TO THE CORRECT COMPUTATION OF MONETARY AWARDS ARE QUESTIONS OF FACT THAT IS BEYOND THE SCOPE OF THE COURT'S REVIEW UNDER RULE 45 OF THE RULES OF COURT.—** Issues as to the correct computation of monetary awards are questions of fact that is beyond the scope of this court's review under Rule 45 of the Rules of Court, considering that it "will require a re-examination and calibration of the evidence on record." This court does not see any reason to overturn the factual findings of the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals with regard to this issue. It is settled that: the findings of fact and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation. Particularly when passed upon the upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL SUSPENSION; IMPOSITION OF LEGAL**

INTEREST ON THE MONETARY AWARD, WARRANTED. — Limlingan and Leyco pray for the modification of the assailed Decision in view of this court's Decision in *Nacar v. Gallery Frames.* In contrast, AIM claims that Limlingan and Leyco are not entitled to legal interest since it has already tendered payment and the delay in the full satisfaction of the award is limlingan and Leyco's fault. Assuming that this court finds it liable for legal interest, AIM prays that legal interest be collected only from the time of the finality of this court's Decision, which affirmed the Court Appeals' May 4, 2010 Decision, until AIM's tender of payment on April 17, 2013. We cannot accept AIM's arguments. The legal interest imposed is but a consequence of AIM's participation in prolonging the proceedings between the parties: That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision.

3. **ID.; ID.; ID.; LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.—** With regard to the proper rate of legal interest, *Nacar* laid down the guidelines for the implementation of legal interest: x x x. Similar to this case, *Nacar* was already in the execution stage and the resolution awarding backwages and separation pay had attained finality prior to the issuance of Bangko Sentral ng Pilipinas Resolution. Applying the guidelines x x x, this court in *Nacar* imposed the legal interest of 12% per annum of the total monetary awards, computed from finality of this court's 2002 resolution to June 30, 2013 and 6% per annum from July 1, 2013 until their full satisfaction. Based on *Nacar* and the above discussion, we grant Limlingan and Leyco's Petition as to the modification of the legal rate of interest. Limlingan and Leyco are entitled to legal interest at the following rates: 12% per annum computed from July 25, 2011, the date of the finality of the Court of Appeals' May 4, 2010 Decision, up to June 30, 2013, and 6% per annum from July 1, 2013 until full satisfaction of the award.

4. **ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES ALREADY ATTAINED FINALITY; RATIONALE FOR THE AWARD OF ATTORNEY'S FEES.—** The issue as to Limlingan and Leyco's entitlement to attorney's fees already attained finality. Issues not raised on appeal cannot be disturbed. Moreover, in *Aliling v. Feliciano, et al.,* this court explained the reason for

awarding attorney's fees: Petitioner Aliling is also entitled to attorney's fees in the amount of ten percent(10%) of his total monetary award, *having been forced to litigate in order to seek redress of his grievances,* pursuant to Article III of the Labor Code and following our ruling in *Exodus International Construction Corporation v. Biscocho,* to wit: In *Rutaquio v. National Labor Relations Commission,* this Court held that: It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

APPEARANCES OF COUNSEL

Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm for Victor S. Limlingan, *et al.*

Laguesma Magsalin Consulta & Gastardo Law Offices for Asian Institute of Management, Inc.

D E C I S I O N

LEONEN, *J.*:

For resolution are Petitions for Review on Certiorari[1] assailing the Decision[2] dated January 13, 2015 and Resolution[3] dated September 1, 2015 of the Court of Appeals Manila in CA-G.R. SP No. 135116.[4] The case stems from the enforcement of the

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[1] *Rollo* (G.R. No. 220481), pp. 27-47; *Rollo* (G.R. No. 220503), pp. 16-41-A.

[2] *Rollo* (G.R. No. 220481), pp. 50-60; *Rollo* (G.R. No. 220503), pp. 929-939. The Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao (Chair) and Melchor Q.C. Sadang of the Eleventh Division.

[3] *Rollo* (G.R. No. 220481), pp. 62-63; *Rollo* (G.R. No. 220503), pp. 963-964. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao (Chair) and Melchor Q.C. Sadang of the Former Eleventh Division.

[4] *Rollo* (G.R. No. 220481), p. 27, Petition for Review on *Certiorari*; *Rollo* (G.R. No. 220503), p. 16, Petition.

Court of Appeals Decision dated May 4, 2010, which attained finality on July 25, 2011.[5]

A Complaint for "illegal suspension, non-payment of salaries, deprivation of medical benefits, life insurance and other benefits, damages and attorney's fees"[6] was filed by Victor S. Limlingan (Limlingan) and Emmanuel A. Leyco (Leyco) against Asian Institute of Management (AIM).[7]

In the Decision[8] dated February 26, 2008, Labor Arbiter Napoleon M. Menese declared that Limlingan and Leyco's suspension was illegal and ordered AIM to pay the salaries and benefits withheld during the suspension, as well as 10% of the amount for attorney's fees:

> WHEREFORE, all foregoing premises considered, judgment is hereby rendered, declaring that the one (1) year suspension of complainants VICTOR S. LIMLINGAN and EMMANUEL A. LEYCO was illegal. Accordingly, respondent ASIAN INSTITUTE OF MANAGEMENT, INC. (AIM) is hereby ordered to pay aforenamed complainants their withheld salaries and other benefits resulting from the said illegal suspension, plus Ten percent (10%) thereof as and for Attorney's fees. Respondent AIM is also ordered to delete from complainants' employment record the aforesaid penalty of suspension.
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> . . . .
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> SO ORDERED.[9]

In its July 4, 2008 Resolution,[10] the National Labor Relations Commission modified the Labor Arbiter's Decision as follows:

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[5] *Rollo* (G.R. No. 220481), pp. 143-144, Entry of Judgment.

[6] *Id*. at 51-52, Court of Appeals Decision in CA-G.R. SP No. 135116.

[7] *Id*.

[8] *Id*. at 65-77.

[9] *Id*. at 52, Court of Appeals Decision in CA-G.R. SP No. 135116, and 76-77, Labor Arbiter's Decision.

[10] *Id*. at 78-87. The Resolution was penned by Commissioner Tito F. Genilo and concurred in by Presiding Commissioner Lourdes C. Javier of the Third Division. Commissioner Gregorio O. Bilog III did not take part.

WHEREFORE, premises considered, the instant appeal is hereby **PARTIALLY GRANTED.** The decision of the Labor Arbiter is hereby **MODIFIED** in finding complainants-appellees suspension is valid for six (6) months only. Consequently, respondent-appellant ASIAN INSTITUTE OF MANAGEMENT is hereby directed to pay the complainants-appellees their salaries half (½) year salary and the amount of ₱50,000.00 each as indemnity in form of nominal damages for their failure to observe complainants-appellees' right to due process.

SO ORDERED.[11] (Emphasis in the original)

Limlingan and Leyco and AIM filed their respective motions for reconsideration,[12] which were denied in the National Labor Relations Commission Resolution[13] dated October 13, 2008:

ACCORDINGLY, let both Motions for Reconsideration be, as they are hereby, **DENIED** for lack of merit. The resolution dated 04 July 2008 **STANDS** undisturbed.

No further motion of similar nature shall be entertained.

SO ORDERED.[14] (Emphasis in the original)

Both parties appealed the Commission's Resolution to the Court of Appeals through *certiorari*.[15] On May 4, 2010, the Court of Appeals promulgated the Decision[16] modifying the findings of the National Labor Relations Commission:

WHEREFORE, the Petition is partially granted. The Resolution, dated July 4, 2008, of the NLRC is modified in that the penalty of suspension is deleted and instead, the penalty of formal reprimand

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[11] *Id*. at 52, Court of Appeals Decision in CA-G.R. SP No. 135116, and 87, NLRC's Resolution dated July 4, 2008.

[12] *Id*. at 89, NLRC's Resolution dated October 13, 2008.

[13] *Id*. at 89-90. The Resolution was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Lourdes C. Javier of the Third Division. Commissioner Gregorio O. Bilog III did not take part.

[14] *Id*. at 90.

[15] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116.

[16] *Id*. at 91-124. The Decision was penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino (Chair) and Normandie B. Pizarro of the Eighth Division.

is imposed on petitioners. Respondent AIM is hereby directed to pay petitioners their one-year salaries corresponding to the period during which they were suspended and Php50,000.00 each as indemnity in the form of nominal damages for its failure to observe the procedure laid down in the Policy Manual for Faculty for disciplining faculty members for dysfunctional behavior.

SO ORDERED.[17] (Emphasis in the original)

The separate motions for reconsideration of Limlingan and Leyco and of AIM were denied by the Court of Appeals.[18]

The parties filed their respective Petitions for Review before this court.[19] In the Resolution[20] dated November 17, 2010, the Petitions were consolidated, and AIM's Petition docketed as GR. No. 193598 was denied.[21] Thus:

The Court, after a review of the records, further resolves to **DENY** the petition for review on certiorari in **G.R. No. 193598** for failure to show that a reversible error was committed by the CA in its Decision dated 4 May 2010 and Resolution dated 27 August 2010 in CA-G.R. SP No. 106714 when it held that respondents' acts of issuing and disseminating the 27 February 2007 letter cannot be considered as dysfunctional behaviour under the Institute's Policy Manual for Faculty and serious misconduct and willful breach of trust and confidence under Article 282 of the Labor Code, thus warranting the reduction of the penalty of suspension to formal reprimand.[22] (Emphasis in the original)

On January 31, 2011, this court issued the Resolution[23] likewise denying Limlingan and Leyco's Petition:

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[17] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116, and 123-124, Court of Appeals Decision in CA-G.R. SP No. 106714.

[18] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116.

[19] *Id*.

[20] *Id*. at 135-136.

[21] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116, and 135, Supreme Court Resolution dated November 17, 2010.

[22] *Id*. at 135, Supreme Court Resolution dated November 17, 2010.

[23] *Id*. at 137-138.

The Court, after a review of the records, resolves to **DENY** the petition for review on certiorari in **G.R. No. 193586** for failure to show that a reversible error was committed by the Court of Appeals in its Decision dated 4 May 2010 and Resolution dated 27 August 2010 in CA-G.R. SP No. 106714 considering that petitioners failed to convince the Court that no valid and compelling reasons existed which excused the belated filing of respondents' appeal before the National Labor Relations Commission; and that their act of releasing the subject demand letter and the manner by which copies of the same were distributed merited the imposition upon them of the penalty of a formal reprimand.[24] (Emphasis in the original)

On March 28, 2011 and June 8, 2011, this court denied with finality the separate motions for reconsideration of both parties.[25] The Court of Appeals' May 4, 2010 Decision in CA-G.R. SP No. 106714 then became final and executory on July 25, 2011.[26]

Limlingan and Leyco filed a Motion for Issuance of Writ of Execution and a Motion for Re-computation of Monetary Award before the National Labor Relations Commission.[27] AIM filed a Manifestation stating that it had already computed Limlingan and Leyco's monetary award and tendered payment based on that computation.[28] A pre-execution conference was held on November 6, 2013; however, "the parties failed to reach an agreement."[29]

On November 29, 2013, the Labor Arbiter issued an Order,[30] which reads:

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[24] *Id*. at 137.

[25] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116, 139-140, Supreme Court Resolution dated March 28, 2011, and 141-142, Supreme Court Resolution dated June 8, 2011.

[26] *Id*. at 53, Court of Appeals Decision in CA-G.R. SP No. 135116, and 143-144, Entry of Judgment.

[27] *Id*. at 53-54, Court of Appeals Decision in CA-G.R. SP No. 135116.

[28] *Id*. at 54.

[29] *Id*.

[30] *Id*. at 145-148. The Order was issued by Labor Arbiter Quintin B. Cueto III.

WHEREFORE, premises considered, this Labor Arbiter hereby declares that the additional computation submitted by complainants as stated above is allowed, accepted, and to be added to the computation submitted by the CEU thereby respondent ASIAN INSTITUTE OF MANAGEMENT, INC. (AIM) is ordered to pay complainants, VICTOR S. LIMLINGAN and EMMANUEL A. LEYCO the amount of ₱3,034,586.45 and ₱1,984,765.19, respectively, immediately, representing their unpaid salaries and benefits, court order indemnification, and legal interests as computed plus the ten (10%) percent attorney's fees.

SO ORDERED.[31] (Emphasis in the original)

The parties elevated the case to the National Labor Relations Commission. The Commission allowed in Limlingan and Leyco's computation their (a) salaries during the period of suspension; and (b) book/medical allowance.[32] However, the Commission reduced the amounts awarded by the Labor Arbiter.[33] It also allowed payment for health insurance premiums, but only for those amounts supported by documentary evidence.[34] The Commission likewise found that there was basis to impose legal interest at the rate of 12% per annum on the monetary award counted from the date of finality of the Court of Appeals Decision.[35] It ruled that the award of attorney's fees had attained finality as AIM did not appeal the issue before.[36]

The dispositive portion of the National Labor Relations Commission Resolution[37] provides:

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[31] *Id*. at 54, Court of Appeals Decision in CA-G.R. SP No. 135116, and 148, Labor Arbiter's Order.

[32] *Id*. at 54-55, Court of Appeals Decision in CA-G.R. SP No. 135116.

[33] *Id*. at 55.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 159, NLRC's Resolution dated December 27, 2013.

[37] *Id*. at 149-161. The Resolution was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III of the Third Division.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED.** The 29 November 2013 Order of Labor Arbiter Quintin B. Cueto III is hereby **MODIFIED** as follows:

1. The award of 13th month pay is hereby reduced to ₱94,502.40 (Limlingan) and ₱50,199.77 (Leyco), respectively;
2. The award of ₱80,000.00 as health insurance premium in favor of private respondent Limlingan is reduced to ₱19,520.80;
3. The Variable Compensation Faculty Share in Executive Program Revenues is reduced to ₱54,411.27 each.
4. The award of interest at the rate of 6% per annum counted from the date oftheir illegal suspension until the finality of the Court of Appeals' Decision is deleted.

The rest of the Order stands.

The Computation and Examination Unit is directed to compute private respondents' monetary awards in accordance with this judgment.

SO ORDERED.[38] (Emphasis in the original)

AIM filed before the Court of Appeals a Petition for Certiorari assailing the National Labor Relations Commission Resolutions dated December 27, 2013 and February 19, 2014.[39]

In the Decision dated January 13, 2015, the Court of Appeals partly granted the Petition.[40] The Court of Appeals modified the rate of interest applicable to the award.[41] The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the present Petition is **PARTLY GRANTED.** The assailed National Labor Relations Commission Third Division's Resolutions dated December 27, 2013 and February 19, 2014, respectively, in LER Case No. 12-361-13 (NLRC NCR Case No. 09-10148-07) are **AFFIRMED** with the only **MODIFICATION**

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[38] *Id*. at 160.

[39] *Id*. at 50, Court of Appeals Decision in CA-G.R. SP No. 135116.

[40] *Id*. at 59.

[41] *Id*. at 60.

that the private respondents are only entitled to the legal interests at the rate of 6% per annum from the time the Decision of the Court of Appeals (in CA-G.R. No. 106714, promulgated on May 4, 2010) became final until full satisfaction thereof. We, however, affirm in all other aspects.

SO ORDERED.[42] (Emphasis in the original)

The Court of Appeals denied the parties' separate motions for reconsideration.[43]

For the second time, the parties come before this court, asking that we resolve the remaining issues in this case. They assail the Court of Appeals Decision dated January 13, 2015 and Resolution dated September 1, 2015 in CA-G.R. SP No. 135116.

In **G.R. No. 220481,** Limlingan and Leyco raise the lone issue of whether they are entitled to interest at the rate of 12% per annum computed from the finality of the Court of Appeals' May 4, 2010 Decision (or on July 25, 2011) up to June 30, 2013, and 6% per annum from July 1, 2013 until full satisfaction of the award.[44]

According to Limlingan and Leyco:

[A] careful reading of the case of *Nacar v. Gallery Frames, et al.* would show that the Honorable Supreme Court computed the amount of legal interests by applying the interest rate of 12% per annum for the period beginning from the finality of the *Decision* until 30 June 2013 and the legal interest rate of 6% from 1 July 2013 until full settlement of the monetary award.[45]

Limlingan and Leyco argue that the Court of Appeals erred when it ruled that they were only entitled to interest at the rate of 6% per annum from the fmality of the May 4, 2010 Decision of the Court of Appeals until full satisfaction of the award.[46]

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[42] *Id*. at 59-60.

[43] *Id*. at 62-63, Court of Appeals Resolution in CA-G.R. SP No. 135116.

[44] *Id*. at 39, Petition for Review on *Certiorari*.

[45] *Id*. at 40.

[46] *Id*. at 41-42.

In **G.R. No. 220503,** AIM argues the following:

First, Leyco is not entitled to the award of health insurance premium in the amount of ₱44,725.32.[47] He is not entitled to the additional amount of ₱5,550.00 allegedly incurred on September 2, 2007 for emergency medical services.[48] The suspension of Leyco's health insurance coverage was justified as he was then suspended for the infraction he committed against AIM.[49]

AIM argues that Limlingan and Leyco are only entitled to the amounts of premium that were supposed to be withheld by AIM and remitted to the health maintenance organization Philamcare.[50] Instead, they are only entitled to the premium of ₱9,760.40 multiplied by the number of the beneficiary and his or her dependents.[51] Leyco has three (3) dependents—a wife and two children-and therefore, his premiums should be computed as: ₱9,760.40 X 4 = ₱39,041.60.[52]

However, while suspended, Leyco requested that his Philamcare subscription be reinstated and that the cost of the premium be charged to his account.[53] Leyco paid only ₱39,225.32, as evidenced by Official Receipt No. 0156174-A.[54]

Second, Limlingan and Leyco are not entitled to legal interest from the time the Court of Appeals' May 4, 2010 Decision became final until its full satisfaction since AIM already tendered payment of the judgment award.[55]

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[47] *Rollo* (G.R. No. 220503), p. 28, Petition.

[48] *Id*.

[49] *Id*. at 29.

[50] *Id*.

[51] *Id*.

[52] *Id*.

[53] *Id*.

[54] *Id*. at 30.

[55] *Id*. at 32.

Moreover, AIM has "sufficiently proven . . . that the contested amounts were properly computed and are amply supported by evidence."[56] Limlingan and Leyco did not offer any basis for their objection to the computation of the amounts.[57] AIM argues that Limlingan and Leyco's statements are merely self-serving and inadmissible.[58]

AIM argues that Limlingan and Leyco contributed to the delay in the satisfaction of the Court of Appeals May 4, 2010 Decision.[59] According to AIM, "[t]o adjudge the Institute liable for legal interest when it is respondents themselves who partly caused the delay in the satisfaction of the Honorable Court of Appeals' Decision and Resolution is definitely unjust and unconscionable."[60]

However, AIM argues that assuming it is liable for legal interest, "it would be unjust to collect the entire amount from [it.]"[61] Legal interest should be collected only from the time of the finality of this court's Decision, which affirmed the Court of Appeals' May 4, 2010 Decision, up to the tender of payment on April l7, 2013.[62]

Third, Limlingan and Leyco are not entitled to attorney's fees since the Court of Appeals Decision never granted them such award.[63]

AIM claims that the award of attorney's fees was removed from the Labor Arbiter's Decision when the National Labor Relations Commission promulgated its Decision dated July 4,

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[56] *Id*. at 32.

[57] *Id*.

[58] *Id*. at 33.

[59] *Id*.

[60] *Id*.

[61] *Id*. at 34.

[62] *Id*.

[63] *Id*.

2008 modifying the award of the Labor Arbiter.[64] There was also no award of attorney's fees in the Court of Appeals' May 4, 2010 Decision.[65] "[N]owhere in the said Decisions can be found any award of attorney's fees. Indeed, '[a]n award of attorney's fees without justification is a conclusion without a premise, its basis being improperly left to speculation and conjecture'[.]"[66]

In assailing the Court of Appeals Decision, AIM argues that "to allow the inclusion of [such] . . . award would be to disregard the rule on strict adherence to and the immutability of judgment."[67]

In the interest of finally settling the case between the parties, we resolve the following issues:

First, whether Emmanuel A. Leyco is entitled to the award of health insurance premiums in the amount of ₱44,725.32;

Second, whether the Court of Appeals erred in awarding legal interest at the rate of 6% per annum from the date the Court of Appeals' May 4, 2010 Decision in CA-G.R. No. 106714 became final until its full satisfaction; and

Lastly, whether Victor S. Limlingan and Emmanuel A. Leyco are entitled to attorney's fees.

At the outset, we consolidate the Petitions as they involve the same parties and interrelated issues. G.R. No. 220503 is consolidated with G.R. No. 220481 to avoid conflicting decisions and to save time and resources of this court. G.R. No. 220503 is referred to the member-in-charge of G.R. No. 220481, the lower-numbered case.

As to the first substantive issue, we rule that the Court of Appeals did not commit reversible error when it held that Leyco is entitled to the amount of ₱44,725.32 for health insurance premiums.

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[64] *Id*. at 36.

[65] *Id*. at 36-37.

[66] *Id*. at 37.

[67] *Id*.

That Limlingan and Leyco are entitled to the payment of health insurance premiums is not contested. As to the amount due to Leyco, all three tribunals—the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals—found that Leyco had sufficiently proven that he was entitled to ₱44,725.32.

As held by the Court of Appeals:

We are more convinced with the claims of Leyco (which were contained in the December 27, 2013 Resolution of the NLRC) that, apart from the ₱39,225.32 he had previously paid, he also spent ₱5,500.00 for his emergency medical expenses on September 2, 2007. We find more in accord with law his argument that he would not have been forced to pay for the said additional expenses had the petitioner not suspended his coverage without notice. Thusly, We find nothing irregular when the NLRC, after a review of the pertinent documents on Record, allowed the award of ₱44,725.32 to Leyco.[68]

Issues as to the correct computation of monetary awards are questions of fact that is beyond the scope of this court's review under Rule 45 of the Rules of Court, considering that it "will require a re-examination and calibration of the evidence on record."[69] This court does not see any reason to overturn the factual findings of the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals with regard to this issue. It is settled that:

the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation. Particularly when passed upon and upheld by the Court of Appeals,

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[68] *Rollo* (G.R. No. 220481), p. 56, Court of Appeals Decision in CA-G.R. SP No. 135116.

[69] See *Reyes v. National Labor Relations Commission (Fifth Division),* 556 Phil. 317, 326 (2007) [Per *J.* Ynares-Santiago, Third Division].

they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[70] (Citations omitted)

On the second issue, we rule in favor of Limlingan and Leyco and grant their Petition.

Limlingan and Leyco pray for the modification of the assailed Decision in view of this court's Decision in *Nacar v. Gallery Frames*.[71] In contrast, AIM claims that Limlingan and Leyco are not entitled to legal interest since it has already tendered payment and the delay in the full satisfaction of the award is Limlingan and Leyco's fault. Assuming that this court finds it liable for legal interest, AIM prays that legal interest be collected only from the time of the finality of this court's Decision, which affirmed the Court Appeals' May 4, 2010 Decision, until AIM's tender of payment on April17, 2013.

We cannot accept AIM's arguments. The legal interest imposed is but a consequence of AIM's participation in prolonging the proceedings between the parties:

> That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision.[72]

With regard to the proper rate of legal interest, *Nacar* laid down the guidelines for the imposition of legal interest:

> **To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:**

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[70] *Acebedo Optical v. National Labor Relations Commission,* 554 Phil. 524, 541 (2007) [Per *J.* Chico-Nazario, Third Division]. See *Bordeos v. National Labor Relations Commission,* 330 Phil. 1003, 1020 (1996) [Per *J.* Panganiban, Third Division].

[71] G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per *J.* Peralta, *En Ban*c].

[72] *Id*. at 453, *citing Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division),* 625 Phil. 612, 630 (2010) [Per *J.* Brion, Second Division].

I. When an obligation, regardless of its source, *i.e.,* law, contracts, quasi- contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[73] (Emphasis in the original, citation omitted)

On July 25, 2011, the Court of Appeals' May 4, 2010 Decision became final and executory and was recorded in the Book of Entries of Judgments.[74] Prior to *Nacar* and Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, the rate of legal interest was pegged at 12% per annum from finality of judgment until its satisfaction, "this interim period being deemed to be by then an equivalent to a forbearance of credit."[75]

Similar to this case, *Nacar* was already in the execution stage and the resolution awarding backwages and separation pay had attained finality prior to the issuance of Bangko Sentral ng Pilipinas Resolution. Applying the guidelines discussed above, this court in *Nacar* imposed the legal interest of 12% per annum of the total monetary awards, computed from finality of this court's 2002 resolution to June 30, 2013 and 6% per annum from July 1, 2013 until their full satisfaction.[76]

Based on *Nacar* and the above discussion, we grant Limlingan and Leyco's Petition as to the modification of the legal rate of interest. Limlingan and Leyco are entitled to legal interest at the following rates: 12% per annum computed from July 25, 2011, the date of the finality of the Court of Appeals' May 4, 2010 Decision, up to June 30, 2013, and 6% per annum from July 1, 2013 until full satisfaction of the award.

As to the third issue, we rule that the Court of Appeals did not commit reversible error when it affirmed the findings of the

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[73] *Id.* at 457-458.

[74] *Rollo* (G.R. No. 220481), pp. 143-144, Entry of Judgment.

[75] See *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97 [Per *J.* Vitug, *En Banc*].

[76] *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456-459 [Per *J.* Peralta, *En Banc*].

Labor Arbiter and the National Labor Relations Commission that Limlingan and Leyco are entitled to attorney's fees.

The National Labor Relations Commission pointed out that the Labor Arbiter's February 26, 2008 Decision awarded 10% attorney's fees to Limlingan and Leyco.[77] AIM, however, limited its appeals to the issues of illegal suspension, "reduction of the suspension period imposed and the award of nominal damages."[78]

Affirming the National Labor Relations Commission, the Court of Appeals held that:

> To be sure, since the attorney's fees matter was not raised as an issue during the appeal, it follows that the aggrieved party had agreed to the same. Time and again, the doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law.[79] (Citation omitted)

The issue as to Limlingan and Leyco's entitlement to attorney's fees already attained finality. Issues not raised on appeal cannot be disturbed.[80] Moreover, in *Aliling v. Feliciano, et al.*,[81] this court explained the reason for awarding attorney's fees:

> Petitioner Aliling is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, *having been forced to litigate in order to seek redress of his grievances,* pursuant to Article 111 of the Labor Code and following our ruling in *Exodus International Construction Corporation v. Biscocho,* to wit:
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> > In *Rutaquio v. National Labor Relations Commission,* this Court held that:

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[77] *Rollo* (G.R. No. 220481), p. 58, Court of Appeals Decision in CA-G.R. SP No. 135116.

[78] *Id*.

[79] *Id*. at 59.

[80] *A.C. Ransom Labor Union-CCLU v. National Labor Relations Commission,* 226 Phil. 199, 204 (1986) [Per *J.* Melencio-Herrera, First Division].

[81] 686 Phil. 889 (2012) [Per *J.* Velasco, Jr., Third Division].

It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

In *Producers Bank of the Philippines v. Court of Appeals* this Court ruled that:

Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party.

While in *Lambert Pawnbrokers and Jewelry Corporation,* the Court specifically ruled:

However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[82] (Emphasis supplied, citations omitted)

WHEREFORE, G.R. No. 220503 is **CONSOLIDATED** with G.R. No. 220481. The Petition for Review filed by Victor S. Limlingan and Emmanuel A. Leyco docketed as G.R. No. 220481 is **GRANTED.** The Petition for Review filed by Asian Institute of Management, Inc. docketed as G.R. No. 220503 is **DENIED** for failing to show reversible error on the part of the Court of Appeals. The Court of Appeals' January 13, 2015 Decision in CA-G.R. SP No. 135116 is **AFFIRMED with MODIFICATION** in that Limlingan and Leyco are entitled to legal interest at the rate of 12% per annum computed from the finality of the Court of Appeals' May 4, 2010 Decision up to June 30, 2013, and at 6% per annum from July 1, 2013 until full satisfaction of the award.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

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[82] *Id*. at 992-923.

THIRD DIVISION

[G.R. No. 195026. February 22, 2016]

CENTRAL MINDANAO UNIVERSITY, represented by its President, DR. MARIA LUISA R. SOLIVEN, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Department of Environment and Natural Resources,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PERSON APPLYING FOR REGISTRATION HAS THE BURDEN OF PROOF TO OVERCOME THE PRESUMPTION OF OWNERSHIP OF LANDS OF THE PUBLIC DOMAIN.—** Under the *Regalian* doctrine, all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony. Also, the doctrine states that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Consequently, the person applying for registration has the burden of proof to overcome the presumption of ownership of lands of the public domain.

2. **ID.; ID.; ID.; A PUBLIC LAND REMAINS PART OF THE INALIENABLE PUBLIC DOMAIN UNLESS IT IS SHOWN TO HAVE BEEN RECLASSIFIED AND ALIENATED BY THE STATE TO A PRIVATE PERSON. —** To prove that a land is alienable, the existence of a positive act of the government, such as presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute declaring the land as alienable and disposable must be established. Hence, a public land remains part of the inalienable public domain unless it is shown to have been reclassified and alienated by the State to a private person.

3. **ID.; ID.; ID.; ID.; LANDS OF THE PUBLIC DOMAIN CLASSIFIED AS RESERVATIONS REMAIN TO BE PROPERTY OF THE PUBLIC DOMINION UNTIL WITHDRAWN FROM THE PUBLIC OR QUASI-PUBLIC**

USE FOR WHICH THEY HAVE BEEN RESERVED, BY ACT OF CONGRESS OR BY PROCLAMATION OF THE PRESIDENT, OR OTHERWISE POSITIVELY DECLARED TO HAVE BEEN CONVERTED TO PATRIMONIAL PROPERTY.— [P]roclamation No. 476 issued by then President Garcia, decreeing certain portions of the public domain in Musuan, Maramag, Bukidnon for CMU's site purposes, was issued pursuant to Section 83 of C.A. No. 141. Being reserved as CMU's school site, the said parcels of land were withdrawn from sale and settlement, and reserved for CMU. Under Section 88 of the same Act, the reserved parcels of land would ordinarily be inalienable and not subject to occupation, entry, sale, lease or other disposition, subject to an exception, *viz*.: Section 88. x x x **until again declared alienable under the provisions of this Act or by proclamation of the President.** In the case of *Navy Officers' Village Association, Inc. v. Republic*, it was held that parcels of land classified as reservations for public or quasi-public uses: (1) are non-alienable and non-disposable in view of Section 88 (in relation with Section 8) of C.A. No. 141, specifically declaring them as non-alienable and not subject to disposition; and (2) they remain public domain lands until they are actually disposed of in favor of private persons. In other words, lands of the public domain classified as reservations remain to be property of the public dominion until withdrawn from the public or *quasi*-public use for which they have been reserved, by act of Congress or by proclamation of the President, or otherwise positively declared to have been converted to patrimonial property.

4. **ID.; ID. ID.; ID.; FOR THE PRESIDENT'S DIRECTIVE TO FILE THE NECESSARY PETITION FOR COMPULSORY REGISTRATION OF PARCELS OF LAND BE CONSIDERED AS AN EQUIVALENT OF A DECLARATION THAT THE LAND IS ALIENABLE AND DISPOSABLE, THE SUBJECT LAND, AMONG OTHERS, SHOULD NOT HAVE BEEN RESERVED FOR PUBLIC OR QUASI-PUBLIC PURPOSES. —** This Court finds that the *De la Rosa* case does not apply in the instant petition because of the varying factual settings x x x. It was explicated in *De la Rosa* that the authority of the President to issue such a directive, held as equivalent to a declaration and certification that the subject land area is alienable and disposable, finds support in Section 7 of C.A. No. 141 x x x. However, the said

directive by the President is limited to those enumerated in Section 8 of C.A. No.141 x x x. As can be gleaned from the x x x provision, the lands which can be declared open to disposition or concession are those which have been officially delimited and classified, or when practicable surveyed; those not reserved for public or *quasi*-public purpose; those not appropriated by the Government; those which have not become private property in any manner; those which have no private right authorized and recognized by C.A. No. 141 or any other valid law may be claimed; or those which have ceased to be reserved or appropriated. For the said President's directive to file the necessary petition for compulsory registration of parcels of land be considered as an equivalent of a declaration that the land is alienable and disposable, the subject land, among others, should not have been reserved for public or *quasi*-public purposes. Therefore, the said directive on December 12, 1960 cannot be considered as a declaration that said land is alienable and disposable. Unlike in *De la Rosa*, the lands, having been reserved for public purpose by virtue of Proclamation No. 476, have not ceased to be so at the time the said directive was made. Hence, the lots did not revert to and become public agricultural land for them to be the subject of a declaration by the President that the same are alienable and disposable.

5. **ID.; ID.; ID.; ID.; WHAT CONSTITUTES ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN.—** As to what constitutes alienable and disposable land of the public domain, this Court expounds in its pronouncements in *Secretary of the Department of Environment and Natural Resources v. Yap*: x x x A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been "officially delimited and classified." The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible

evidence must be established that the land subject of the application (or claim) is alienable or disposable. There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.

6. **ID.; ID.; ID.; ID.; ABSENT PROOF THAT THE LAND RESERVATIONS HAVE BEEN RECLASSIFIED AS ALIENABLE AND DISPOSABLE, THE SAID LANDS REMAIN PART OF INALIENABLE PUBLIC DOMAIN, HENCE; THEY ARE NOT REGISTRABLE UNDER THE TORRENS SYSTEM.—** CMU failed to establish, through incontrovertible evidence, that the land reservations registered in its name are alienable and disposable lands of public domain. Aside from the series of indorsements regarding the filing of the application for the compulsory registration of the parcels of land and the said directive from the President, CMU did not present any proof of a positive act of the government declaring the said lands alienable and disposable. For lack of proof that the said land reservations have been reclassified as alienable and disposable, the said lands remain part of inalienable public domain, hence; they are not registrable under the Torrens system.

APPEARANCES OF COUNSEL

Rodriguez Casila Galon & Associates for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is a petition for review on *certiorari* dated January 14, 2011 filed by petitioner Central Mindanao

University *(CMU),* seeking to reverse and set aside the Decision[1] dated December 30, 2010 of the Court of Appeals (*CA),* which annulled the Decision[2] dated December 22, 1971, the Amended Decision[3] dated October 7, 1972 and the Second Amended Decision[4] dated September 12, 1974 rendered by the then Court of First Instance (*CFI),* 15th Judicial District, Branch II of Bukidnon and annulled the Decrees No. N-154065, N-154066 and N-154067 issued in favor of petitioner and the Original Certificate of Title *(OCT)* No. 0-160, OCT No. 0-161 and OCT No. 0-162 registered in petitioner's name on January 29, 1975.

The facts follow:

Petitioner Central Mindanao University (*CMU)* is an agricultural educational institution owned and run by the State established by virtue of Republic Act No. 4498.[5] It is represented by its President, Dr. Maria Luisa R. Soliven in accordance with CMU Board of Regents Resolution No. 02, s. 2011.[6]

The subjects of the controversy are two parcels of land situated at Musuan, Maramag, Bukidnon identified as "Sheet 1, Lot 1 of Ir-1031-D" consisting of 20,619,175 square meters, and "Sheet 2, Lot 2 of Ir- 1031-D" consisting of 13,391,795 square meters, more or less.[7]

In 1946, CMU took possession of the subject parcels of land and started construction for the school site upon the confirmation of the Secretary of Public Instruction.[8] However, during the

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[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando, concurring, *rollo,* pp. 51-66.

[2] Penned by Judge Abundio Z. Arrieta, CA *rollo,* pp. 30-71.

[3] *Id.* at 72-81.

[4] *Id.* at 82-98.

[5] *AN ACT TO CONVERT MINDANAO AGRICULTURAL COLLEGE INTO CENTRAL MINDANAO UNIVERSITY AND TO AUTHORIZE THE APPROPRIATION OF ADDITIONAL FUNDS THEREFOR.*

[6] *Rollo,* pp. 5-6.

[7] *Id.* at 52.

[8] *Id.* at 9.

final survey in 1952, CMU discovered that there were several adverse claimants, holders, possessors and occupants of the portions of lots identified as school sites.[9]

On January 16, 1958, upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of Section 83[10] of Commonwealth Act *(C.A.)* No. 141, otherwise known as *Public Land Act,* President Carlos P. Garcia issued Proclamation No. 476[11] which reserved certain portions of the public domain in Musuan, Maramag, Bukidnon for petitioner CMU's (formerly Mindanao Agricultural College) site purposes.[12] The said parcels of land were withdrawn from sale or settlement and reserved for CMU's school site purposes, "subject to private rights, if any there be."

In a letter dated October 27, 1960, the Director of Lands Zoilo Castrillo formally requested the Secretary of Agriculture and Natural Resources that he be authorized under Section 87 of C.A. No. 141, to file in the CFI of Bukidnon an application for the compulsory registration of the parcels of land reserved by President Garcia under Proclamation No. 476 as CMU's school site purposes.[13]

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[9] *Id.* at 11.

[10] Section 83. Upon the Recommendation of the Secretary of Agriculture and Commerce, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof: in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas comunales,* public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit.

[11] *Reserving for the Mindanao Agricultuural College Site Purposes Certain Portions of the Public Domain Situated in the Barrio of Musuan, Municipality of Maramag, Province of Bukidnon, Island of Mindanao.*

[12] *Rollo,* p. 11.

[13] *Id.* at 12.

In the first indorsement dated November 9, 1960, the Office of the Secretary of Agriculture and Natural Resources, through its Undersecretary Salvador F. Cunanan, forwarded to the Executive Secretary a recommendation that the Director of Lands be authorized to file the said application.[14]

Thereafter, the Office of the President, through the Assistant Executive Secretary Enrique C. Quema, in the second indorsement dated December 12, 1960, authorized and directed the Director of Lands to file the necessary petition in the CFI of Bukidnon for the compulsory registration of the parcels of land reserved for CMU.[15]

Department Legal Counsel Alejandro V. Recto, in the indorsement dated December 28, 1960, communicated the said directive and authority granted to the Director of Lands to file the application for compulsory registration.[16]

On January 31, 1961, the Director of Lands filed a petition with the then Court of First Instance of Bukidnon for the settlement and adjudication of the title of the parcels of land reserved in favor of CMU, and for the determination of the rights of adverse claimants in relation to the reservation of the Land.[17]

The cadastral court, in its Decision dated December 22, 1971 in Land Registration Case Cadastral Rec. No. 414, declared that the subject parcels of land as public land included in the reservation for CMU, and be registered in its name, except for specified portions adjudicated to other persons.[18] The court also gave the other 18 claimants an opportunity to acquire full ownership in the subject parcels of land.[19] Hence, the court

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[14] *Id.* at 13.

[15] *Id.*

[16] *Id.* at 14.

[17] CA *rollo,* pp. 104-106.

[18] *Rollo,* pp. 52-53.

[19] *Id.* at 53.

reduced the claim of CMU to 3,041 hectares of total land area.[20] The dispositive portion of the decision reads:

In view of the foregoing considerations, judgment is hereby rendered declaring Lot No. 1 containing an approximate area of 20,619,175 square meters and Lot No. 2 containing an area of 13,391,795 square meters, both situated in the barrio of Musuan, municipality of Maramag, Bukidnon, as described in the survey plans and technical descriptions approved by the Director of Lands as IR-1031-D, marked as Exhibits "D" and "D-1" of the Central Mindanao University, as public land included in the reservation in favor of said University by virtue of Proclamation No. 476, series of 1958, of the President of the Philippines, which may be registered in its name, except such portions hereinbelow specified which are adjudicated in favor of the following:

1. Venancio Olohoy, married, and Esmeralda Lauga, married to Julio Sagde, both of legal ages and residents of Valencia, Bukidnon- 17.75 hectares of Lot No.1 as shown in the survey plan (Exh. "D");
2. Martina Songkit, of legal age, married to Martin Binanos and resident of Maramag, Bukidnon — 3 hectares of Lot No. 2 as shown in the plan Exh. "D-1";
3. Pablo Saldivar, widower, of legal age and resident of Dologon, Maramag, Bukidnon — 12 hectares of Lot No.2 as indicated in the survey plan Exh. "D-" abovementioned;
4. Fernando Bungcas, married to Feliciana Gayonan and resident of Dologon, Maramag — 6 hectares of Lot No. 2;
5. Cerilo Salicubay, married to Valentina Bento, and Virginia Salicubay, married to Ricardo Tunasan, both of legal ages and residents of Panalsalan, Maramag, Bukidnon, share and share alike, — 4 hectares of Lot No. 2
6. Rosita Lupiahan, of legal age, married to Simplicio Alba and resident of Maramag, Bukidnon — 4 hectares of Lot No.2.

The areas herein adjudicated to the above-named private individuals should be surveyed and each lot given a separate number with their corresponding technical descriptions.

Considering, however, that the Court rejected most of the claim due to the dubious nature of the occupation of the claimants prior

[20] *Supra* note 11.

to the take-over by the College, now University, in 1946 but most of them remained on the land up to the present time, in order to avoid possible injustice and in line with the national objective of providing land for the landless, it is hereby recommended that the claimants enumerated hereunder who filed answers and presented evidence which, nevertheless, was found short of the requirements for a decree of registration, be given the opportunity to acquire full ownership thereof through a homestead, or free patent application if they are landless persons, otherwise by means of a sales application if they are already owners of other pieces of real estate, after a corresponding amendment of the Executive Proclamation through the avenues allowed by law. The following claimants may be considered for that purpose, namely:

1. Geronimo Aniceto and his sister Francisca Aniceto- 12 hectares of Lot No. 2;
2. Bonifacio Aniceto- 6 hectares of Lot No. 2;
3. Julita Aniceto- 12 hectares of Lot No. 2;
4. Maximo Nulo- 5 hectares of Lot No. 2;
5. Magno Sepada- 3 hectares of Lot No. I;
6. Eulogio Guimba- 12 hectares of Lot No. 2;
7. Mario Baguhin and his wife, Treponia Dagoplo 18 hectares of Lot No. 2;
8. Aniceto Nayawan- 12 hectares of Lot No. 2;
9. Eduardo Saloay-ay- 13 hectares of Lot No. 2;
10. Arcadio Belmis and his wife Beatriz Lauga- 24 hectares of Lot No. 1;
11. Vitaliano Lauga- 24 hectares of Lot No. 1;
12. Procopio Abellar- 12 hectares of Lot No. 1;
13. Rufino Dador- 12 hectares of Lot No. 1;
14. Roque Larayan- 12 hectares of Lot No. 1;
15. Benito Lutad- 12 hectares of Lot No. 1;
16. Juliana Pasamonte- 11 hectares of Lot No. 1;
17. Tirso Pimentel- 19 hectares of Lot No. 1; and
18. Dativa P. Velez- 18 hectares of Lot No. 1.

Should the above recommendation be given due course, it is further suggested that those claimants included in the said recommendation who are now occupying portions of Lot No. 2 situated above the university grounds on the hillside which they have already denuded, should be transferred to the lower portions of the land near or along the Pulangi river in order to enable the University to reforest the hillside to protect the watershed of its irrigation system and water supply.

After this decision become final and the portions adjudicated to private persons have been segregated and their corresponding technical descriptions provided, the order of the issuance of the corresponding decree and the certificates oftitle shall be issued.

SO ORDERED.[21]

Upon the submission of the parties of the compromise agreement through a Joint Manifestation, the cadastral court rendered its Amended Decision dated October 7, 1972 adjudicating in full ownership of some portions of the subject lots to the 29 groups of claimants.[22] A portion of the *fallo* of the amended decision reads:

WHEREFORE, pursuant to the evidence presented and the compromise agreement submitted by the parties, the decision rendered by this Court on December 22, 1971 is hereby AMENDED and another one entered ADJUDICATING in full ownership to the claimants hereinbelow specified the following portions of the lots in questions, to wit:

x x x x x x x x x

The remaining portions of Lots 1 and 2 not otherwise adjudicated to any of the above-named private claimants are hereby ADJUDICATED in full ownership to the Central Mindanao State University. It is hereby directed that the different portions of Lots 1 and 2 hereinabove granted to private claimants must [be segregated] by a competent surveyor and given their technical descriptions and corresponding lot numbers for purposes of the issuance of certificates of title in their favor.

It is, however, ordered that the area adjacent and around or near the watersheds or sources of Lot No. 2 adjudicated to any of the private claimants specified in the foregoing paragraph may be replaced or substituted to the Central Mindanao State University with other areas of equal extent in either Lot 1 or 2, should said University desire to do so in order to protect and conserve the watersheds.

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[21] *Supra* note 2, at 69-71.

[22] *Supra* note 19.

The findings and resolutions made by the Court in its original decision not affected by the amendments incorporated elsewhere herein shall stand.

The petition from relief from judgment presented by Lucio Butad which the Court finds without merit is hereby denied.

Once the decision becomes final and the subdivision directed in the preceding paragraph has been accomplished, the order for the issuance of the corresponding decree of registration and the certificates of title in favor of each and every adjudicatee shall likewise issue.

SO ORDERED.[23]

Based on the Order made by the court that those portions of the private claimants in the area adjacent and around, or near the watersheds of Lot No. 2 may be replaced or substituted by CMU with areas of equal extent, the 16 grantees entered into an agreement with CMU for the replacement of the areas adjudicated to them with those outside the watershed vicinity or beyond the area necessary for the proper development, administration, supervision and utilization of the portion adjudicated to CMU.[24]

Thereafter, the cadastral court, in its second amendment of the Decision dated September 12, 1974, ordered that the specific portions of the subject lots be adjudicated to the 33 claimants as indicated in their agreement.[25] It also awarded to CMU Lot 1-S (18,531,671 square meters), Lot 2-A (10,001 square meters), and Lot 2-Q (12,266,524 square meters).[26] On January 25, 1975, the court issued Decrees No. N-154065, N-154066, and N-154067 in favor of CMU.[27] Consequently, OCT Nos. 0-160, 0-161 and 0-162 were registered in the name of CMU on January 29, 1975.[28] The decretal portion of the decision reads:

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[23] *Supra* note 3, at 78-81.

[24] *Supra* note 4, at 91.

[25] *Id.* at 94-98.

[26] *Id.* at 98.

[27] *Rollo,* p. 54.

[28] *Id.*

WHEREFORE, finding said manifestation and agreement of the parties in order, the dispositive portions of the amended decision rendered by this Court on October 7, 1972 aforementioned is further amended such that the lots specified hereunder and more particularly indicated in the revised plans and technical descriptions above-mentioned are hereby adjudicated as follows:

1. To Roque Larayan, Lot 1-A with an area of 120.001 square meters;
2. To Fernanda Bungcas, Lot 1-B with an area of 60.00 square meters;
3. To Tirso Pimentel, Lot 1-C with an area of 190.000 square meters;
4. To Juliana Pasamonte, Lot 1-D with an area of 109.999 square meters;
5. To Dativa Velez, Lot 1-E with an area of 180.00 square meters;
6. To Mario Bagubin, Lot 1-F with an area of 60.00 square meters;
7. To Triponia Dagoplo, Lot 1-G with an area of 60.001 square meters;
8. To Mario Baguhin, Lot 1-H with an area of 60.001 square meters;
9. To Celerina Guimba, Lot 1-I with an area of 30.00I square meters;
10. To Constantino Baston, Lot 1-J with an area of 30.001 square meters;
11. To Maximo Nulo, Lot 1-K with an area of 49.999 square meters;
12. To Beatriz Lauga, Lot 1-L with an area of 100.00 square meters;
13. To Evorcio Olohoy, Lot 1-M with an area of 177.500 square meters;
14. To Arcadio Belmis, Lot 1-N with an area of 140.000 square meters;
15. To Luciano Namuag, Lot 1-O with an area of 240.000 square meters;
16. To Vitaliano Lauga, Lot 1-P with an area of 240.000 square meters;
17. To Rufino Dador, Lot 1-Q with an area of 120.00 square meters;
18. To Procopio Abellar, Lot 1-B with an area of 120.001 square meters;

19. To Eduardo Saloay-ay, Lot 2-B with an area of 130.000 square meters;
20. To Francisco Anecito, Lot 2-C with an area of 120.000 square meters;
21. To Julita Anecito, Lot 2-D with an area of 60.000 square meters;
22. To Vicente Buntan, Lot 2-E with an area of 30.000 square meters;
23. To Victoriano Lacorda, Lot 2-F with an area of 130.000 square meters;
24. To Cerilo Salicubay, Lot 2-G with an area of 40.000 square meters;
25. To Julita Anecito, Lot 2-H with an area of 60.000 square meters;
26. To Benito Butad, Lot 2-I with an area of 120.000 square meters;
27. To Pablo Zaldivar, Lot 2-J with an area of 120.000 square meters;
28. To Magno Sepada, Lot 2-K with an area of 30.000 square meters;
29. To Anecito Nayawan, Lot 2-L with an area of 120.000 square meters;
30. To Bonifacio Anecito, Lot 2-M with an area of 60.001 square meters;
31. To Eulogio Guimba, Lot 2-N with an area of 120.001 square meters;
32. To Martina Songkit, Lot 2-0 with an area of 30.000 square meters;
33. To Rosita Lapianan, Lot 2-P with an area of 40.000 square meters;
34. To Central Mindanao State University; Lot 1-S with an area of 18,531.671 square meters;
35. To Central Mindanao State University; Lot 2-A with an area of 10.001 square meters;
36. To Central Mindanao State University, Lot 2-Q with an area of 12,266,524 square meters;

The findings and resolutions made by this Court in its original decision not affected by the amendments incorporated herein shall remain in force.

Once this decision becomes final, the order for the issuance of the corresponding decrees of registration and the certification

of title in favor of each and every adjudicates shall likewise issue.

SO ORDERED.[29]

On December 15, 2003, the Republic of the Philippines, represented by the Department of Environment and Natural Resources through the Office of the Solicitor General (*OSG*), filed before the CA a petition for annulment of the Decision dated September 12, 1974 by the cadastral court granting in favor of CMU the title to the subject parcels of land.

The Republic argued that the cadastral court should have summarily dismissed the registration proceedings since the Solicitor General did not sign or file the petition for compulsory registration of the parcels of land, as provided in Sections 53[30] and 87[31] of Commonwealth Act No. 141.[32] It also alleged that the subject parcels of land are inalienable lands of public domain.[33] It maintained that the cadastral court did not acquire jurisdiction

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[29] CA *rollo,* pp. 94-98.

[30] Section 53. It shall be lawful for the Director of Lands, whenever in the opinion of the President the public interests shall require it, to cause to be filed in the proper Court of First Instance, through the Solicitor-General or the officer acting in his stead, a petition against the holder, claimant, possessor, or occupant of any land who shall not have voluntarily come in under the provisions of this chapter or of the Land Registration Act, stating in substance that the title of such holder, claimant, possessor, or occupant is open to discussion; or that the boundaries of any such land which has not been brought into court as aforesaid are open to question; or that it is advisable that the title to such lands be settled and adjudicated, and praying that the title to any such land or the boundaries thereof or the right to occupancy thereof be settled and adjudicated. The judicial proceedings under this section shall be in accordance with the laws on adjudication of title in cadastral proceedings.

[31] Section 87. If all the lands included in the proclamation of the President are not registered under the Land Registration Act, the Solicitor-General, if requested to do so by the Secretary of Agriculture and Commerce, shall proceed in accordance with the provision of section fifty-three of this Act.

[32] CA *rollo.* pp. 14 and 16.

[33] *Id.* at 15.

over the *res;* hence, the entire proceedings of the case should be null and void.

Accordingly, the CA ruled in favor of the respondent. The dispositive portion of the decision reads:

> ACCORDINGLY, the instant petition is GRANTED. The 1) Decision dated December 22, 1971, 2) Amended Decision dated October 7, 1972 and 3) Second Amended Decision dated September 12, 1974, all rendered by the Court of First Instance, 15th Judicial District, Branch II, Bukidnon Province, in "L.R.C. Cad. Rec. No. 414, Sec. 87 of Commonwealth Act 141, Ir-1031-D (Lots 1 & 2), Maramag, Bukidnon, insofar as they adjudicated a portion of the land covered by Proclamation No. 476 to the Central Mindanao University, are declared NULL and VOID.
>
> Consequently, 1) Decrees No. N-154065, N-154066 and N-154067 issued in favor of the University on January 24, 1975; and 2) Original Certificates of Title (OCT) No. 0-160 (covering Lot 1-S), No. 0-161 (for Lot 2-A) and No. 0-162 (for Lot 2-Q) registered in the University's name on January 29, 1975, are likewise declared NULL AND VOID.
>
> SO ORDERED.[34]

The CA ruled that there was no sufficient proof of a positive act by the government, such as presidential proclamation, executive order, administrative action, investigation reports of Bureau of Lands investigators, or a legislative act or statute, which declared the land of the public domain alienable and disposable.[35] The documents adduced by CMU did not expressly declare that the covered land is already alienable and disposable and that one of such documents was merely signed by the Assistant Executive secretary.[36]

According to the CA, CMU was unable to prove that the subject land ceased to have the status of a reservation.[37] However,

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[34] *Rollo.* pp. 65-66.

[35] *Id.* at 59-60.

[36] *Id.* at 60.

[37] *Id.*

the CA clarified that despite nullification of the titles in its favor, CMU is still the rightful possessor of the subject property by virtue of Proclamation No. 476.[38]

Hence, the petitioner CMU filed the present petition before this Court raising the sole issue:

> Whether or not the Court of Appeals:
> 1. committed a serious and grave error and gravely abused its discretion on a question of law, and
> 2. ruled and decided a question of substance in a way and manner not in accord with law and applicable decisions of this Honorable Court
>
> in granting the petition for annulment of judgment filed by respondent on the ground that the cadastral court has no jurisdiction over the subject matter or the specific res of the subject matter of the petition below for the reason that the subject lands are inalienable and non-disposable lands of the public domain.[39]

CMU maintains that the CA has completely misconstrued the facts of the cadastral proceedings since the documents it presented showed that the subject property has already been declared, classified, and certified by the Office of the President as alienable and disposable lands.[40]

Particularly, CMU alleges that the specific and express authorization and the directive, as embodied in the Second Indorsement[41] dated December 12, 1960, from the President, through the then Assistant Executive Secretary Enrique C. Quema, authorizing the Director of Lands to file the necessary petition in the CFI of Bukidnon for compulsory registration of the parcels of land reserved for CMU's site purposes is equivalent to a declaration and certification by the Office of the President that the subject parcels of land are alienable and disposable.[42]

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[38] *Id.* at 65.

[39] *Id.* at 21.

[40] *Id.* at 23.

[41] *Id.* at 70.

[42] *Id.* at 26.

CMU has cited the case of *Republic v. Judge De la Rosa*[43] wherein the then President Quirino issued on June 22, 1951 a directive authorizing the Director of Lands to file the necessary petition in the CFI of Isabela for the settlement and adjudication of the titles to the tract of land involved in the Gamu Public Lands Subdivision, Pls-62, Case 5. This Court held that the said presidential directive was equivalent to a declaration and certification that the subject land area is alienable and disposable.[44]

This Court finds the instant petition without merit.

Under the *Regalian* doctrine, all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony.[45] Also, the doctrine states that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[46] Consequently, the person applying for registration has the burden of proof to overcome the presumption of ownership of lands of the public domain.[47]

To prove that a land is alienable, the existence of a positive act of the government, such as presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute declaring the land as alienable and disposable must be established.[48] Hence, a public land remains part of the inalienable public domain unless it is shown to have been reclassified and alienated by the State to a private person.[49]

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[43] 255 Phil. 11 (1989).

[44] *Republic v. Judge De Ia Rosa, supra,* at 22.

[45] *Republic v. Capco de Tensuan,* G.R. No. 171136, October 23, 2013, 708 SCRA 367, 382.

[46] *ld.*

[47] *Id.*

[48] *Republic of the Philippines, represented by Commander Raymond Alpuerto of the Naval Base Camillo Osias, Port San Vicente, Sta. Ana, Cagayan v. Rev. Claudio R. Cortez, Sr.,* G.R. No. 197472, September 7, 2015.

[49] *Id.*

As noted, Proclamation No. 476 issued by then President Garcia, decreeing certain portions of the public domain in Musuan, Maramag, Bukidnon for CMU's site purposes, was issued pursuant to Section 83 of C.A. No. 141. Being reserved as CMU's school site, the said parcels of land were withdrawn from sale and settlement, and reserved for CMU. Under Section 88 of the same Act, the reserved parcels of land would ordinarily be inalienable and not subject to occupation, entry, sale, lease or other disposition, subject to an exception, *viz*.:

> Section 88. The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition **until again declared alienable under the provisions of this Act or by proclamation of the President**. (Emphasis supplied)

In the case of *Navy Officers' Village Association, Inc. v. Republic,*[50] it was held that parcels of land classified as reservations for public or *quasi*-public uses: (1) are non-alienable and non-disposable in view of Section 88 (in relation with Section 8) of C.A. No. 141, specifically declaring them as non-alienable and not subject to disposition; and (2) they remain public domain lands until they are actually disposed of in favor of private persons.[51] In other words, lands of the public domain classified as reservations remain to be property of the public dominion until withdrawn from the public or *quasi-public* use for which they have been reserved, by act of Congress or by proclamation of the President, or otherwise positively declared to have been converted to patrimonial property.[52]

In the case at bar, CMU relies on the Court's ruling in the *De la Rosa*[53] case that the directive from the President authorizing the Director of Lands to file the necessary petition for the compulsory registration of the parcels of land so reserved is

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[50] G.R. No. 177168, August 3, 2015.

[51] *Navy Officers' Village Association, Inc. v. Republic, supra.*

[52] *Id.*

[53] *Supra* note 42.

the equivalent of the declaration and certification that the subject land is alienable and disposable. As such, CMU avows that the subject lots, as declared alienable and disposable, are properly registered in its name.

This Court finds that the *De la Rosa* case does not apply in the instant petition because of the varying factual settings, to wit:

a. In *De Ia Rosa,* the Mallig Plains Reservation was reserved by the President for settlement purposes under the administration of National Land Settlement Administration *(NLSA),* later replaced by Land Settlement and Development Corporation *(LASEDECO),* while the subject lots in the present case was reserved for educational purposes, e.g. as CMU's school site, under the administration of the Board of Trustees of CMU.

b. The National Resettlement and Rehabilitation Administration, when it replaced LASEDECO, excluded the Mallig Plains Reservation among the properties it needed in carrying out the purposes and objectives of Republic Act No. 1160,[54] thus, the Reservation eventually reverted to and became public agricultural land. There was no evidence that CMU ceased to use and occupy the reserved lots in Musuan, Maramag, Bukidnon as its school site or that its public purpose is abandoned, for the lots to revert to and become public agricultural land.

c. At the time that President Quirino issued the directive, the Gamu Public Land Subdivision in the Mallig Plains Reservation was not reserved for public or quasi-public purpose or has ceased to be so. On the other hand, the subject lots in Bukidnon are reserved for public purpose when the

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[54] *AN ACT TO FURTHER IMPLEMENT THE FREE DISTRIBUTION OF AGRICULTURAL LANDS OF THE PUBLIC DOMAIN AS PROVIDED FOR IN COMMONWEALTH ACT NUMBERED SIX HUNDRED AND NINETY-ONE, AS AMENDED, TO ABOLISH THE LAND SETTLEMENT AND DEVELOPMENT CORPORATION CREATED UNDER EXECUTIVE ORDER NUMBERED THREE HUNDRED AND FIFTY-FIVE, DATED OCTOBER TWENTY-THREE, NINETEEN HUNDRED AND FIFTY, AND TO CREATE IN ITS PLACE THE NATIONAL RESETTLEMENT AND REHABILITATION ADMINISTRATION, AND FOR OTHER PURPOSES.*

President, through the Assistant Executive Secretary, issued the said directive.

d. In the *De la Rosa* case, the private respondent was a qualified private claimant with the requisite period of possession of the subject residential lot in his favor. Meanwhile, CMU is not a private claimant of the land so reserved.

It was explicated in *De la Rosa*[55] that the authority of the President to issue such a directive, held as equivalent to a declaration and certification that the subject land area is alienable and disposable, finds support in Section 7 of C.A. No. 141, to wit:

Sec. 7. For purposes of the **administration and disposition of alienable or disposable public lands**, the President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time declare what lands are open to disposition or concession under this Act. (Emphasis supplied).

However, the said directive by the President is limited to those enumerated in Section 8 of C.A. No. 141, which provides that:

Section 8. Only those lands shall be declared **open to disposition or concession** which have been **officially delimited and classified** and, **when practicable, surveyed,** and which have **not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed,** or which, **having been reserved or appropriated, have ceased to be so.** However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly. (Emphases supplied)

As can be gleaned from the above provision, the lands which can be declared open to disposition or concession are those which have been officially delimited and classified, or when practicable

[55] *Supra* note 42.

surveyed; those not reserved for public or *quasi*-public purpose; those not appropriated by the Government; those which have not become private property in any manner; those which have no private right authorized and recognized by C.A. No. 141 or any other valid law may be claimed; or those which have ceased to be reserved or appropriated.

For the said President's directive to file the necessary petition for compulsory registration of parcels of land be considered as an equivalent of a declaration that the land is alienable and disposable, the subject land, among others, should not have been reserved for public or *quasi*-public purposes.

Therefore, the said directive on December 12, 1960 cannot be considered as a declaration that said land is alienable and disposable. Unlike in *De la Rosa,* the lands, having been reserved for public purpose by virtue of Proclamation No. 476, have not ceased to be so at the time the said directive was made. Hence, the lots did not revert to and become public agricultural land for them to be the subject of a declaration by the President that the same are alienable and disposable.

We have ruled in the case of *CMU v. DARAB*[56] that the CMU land reservation is not alienable and disposable land of public domain, *viz.*:

> It is our opinion that the 400 hectares ordered segregated by the DARAB and affirmed by the Court of Appeals in its Decision dated August 20, 1990, is not covered by the [Comprehensive Agrarian Reform Program] CARP because:
>
> (1) It is **not alienable and disposable land** of the public domain;
> (2) The CMU land reservation is not in excess of specific limits as determined by Congress;
> (3) It is private land registered and titled in the name of its lawful owner, the CMU;
> (4) It is exempt from coverage under Section 10 of R.A. 6657 because the lands are actually, directly and exclusively

[56] G.R. No. 100091, October 22, 1992.

used and *found to be necessary* for school site and campus, including experimental farm stations for educational purposes, and for establishing seed and seedling research and pilot production centers.

The inalienable character of the lands as part of the long term functions of autonomous agricultural educational institution is reiterated in *CMU v. Executive Secretary*:[57]

It did not matter that it was President Arroyo who, in this case, attempted by proclamation to appropriate the lands for distribution to indigenous peoples and cultural communities. As already stated, the lands by their character have become **inalienable from the moment President Garcia dedicated them for CMU's use** in scientific and technological research in the field of agriculture. They have **ceased to be alienable public lands**.[58]

This Court is not unmindful of its earlier pronouncement in *CMU v. DARAB* that the land reservation is a private land registered and titled in the name of its lawful owner, the CMU. This pronouncement, which is now being argued by CMU as one of its bases in convincing this Court that the subject property is owned by it and already alienable, is specious. The 1992 CMU case merely enumerated the reasons why the said portion of the property is beyond the coverage of CARP. Moreover, the fact that the Court had already settled the inalienable character of the subject property as part of the long term functions of the autonomous agricultural educational institution in the case of *CMU v. DARAB* and reiterated in *CMU v. Executive Secretary,* belies CMU's contention that this Court has recognized that the said land is a private property or that the land is alienable and disposable.

As to what constitutes alienable and disposable land of the public domain, this Court expounds in its pronouncements in *Secretary of the Department of Environment and Natural Resources v. Yap*:[59]

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[57] 645 Phil. 282 (2010).

[58] *CMU v. Executive Secretary, supra,* at 291. (Emphasis supplied)

[59] 589 Phil. 156 (2008).

x x x x x x x x x

A positive act declaring land as alienable and disposable is required. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been "officially delimited and classified."

The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.[60]

In the case at bar, CMU failed to establish, through incontrovertible evidence, that the land reservations registered in its name are alienable and disposable lands of public domain. Aside from the series of indorsements regarding the filing of the application for the compulsory registration of the parcels of land and the said directive from the President, CMU did not present any proof of a positive act of the government declaring the said lands alienable and disposable.

For lack of proof that the said land reservations have been reclassified as alienable and disposable, the said lands remain part of inalienable public domain, hence; they are not registrable under Torrens system.

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[60] *Secretary of the Department of Environment and Natural Resources v. Yap, supra,* at 182-183. (Citations and emphasis omitted))

This Court will not discuss the other issue raised by CMU, *e.g,* the filing of the petition for cadastral proceeding was pursuant to the written consent, authorization and directive of the OSG, as the same was not discussed in the assailed Decision of the CA. This Court also dismisses the other issue raised — that the titles in CMU's name were singled out by respondent — for lack of evidence.

WHEREFORE, the petition for review on *certiorari* dated January 14, 2011 filed by petitioner Central Mindanao University is hereby **DENIED.** The Decision dated December 30, 2010 of the Court of Appeals in CA-G.R. SP No. 81301 is hereby **AFFIRMED.** The proceedings in the Court of First Instance, 15th Judicial District, Branch II of Bukidnon is **NULL and VOID.** Accordingly, Original Certificate of Title Nos. 0-160, OCT No. 0-161 and OCT No. 0-162 issued in the name of petitioner, are **CANCELLED.** Sheet 1, Lot 1 of Ir-1031-D and Sheet 2, Lot 2 of Ir-1031-D are **ORDERED REVERTED** to the public domain.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 208976. February 22, 2016]

THE HONORABLE OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **LEOVIGILDO DELOS REYES, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE OFFICE OF THE OMBUDSMAN, WHEN SUPPORTED

BY SUBSTANTIAL EVIDENCE, IS CONCLUSIVE.— Respondent Leovigildo Delos Reyes, Jr. relies heavily on PCSO's Comment before the Court of Appeals and on PCSO's statements that support his innocence of the administrative charges. However, he forgets the settled rule that "[f]indings of fact by the Office of the Ombudsman[,] when supported by substantial evidence[,] are conclusive." As we found in our October 13, 2014 Resolution, respondent failed to show arbitrariness on the part of the Office of the Ombudsman to warrant judicial intervention.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; GROSS NEGLECT OF DUTY; CHARACTERIZED BY WANT OF EVEN SLIGHT CARE, ACTING OR OMITTING TO ACT IN A SITUATION WHERE THERE IS A DUTY TO ACT, NOT INADVERTENTLY BUT WILLFULLY AND INTENTIONALLY, WITH A CONSCIOUS INDIFFERENCE TO CONSEQUENCES, INSOFAR AS OTHER PERSONS MAY BE AFFECTED.—** As acknowledged by respondent, to be administratively liable for neglect of duty, the duty need not be expressly included in the respondent's job description. Gross neglect of duty is "characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected." This omission of care is that which even "inattentive and thoughtless men never fail to give to their own property." "In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable."

3. **ID.; ID.; ID.; MISCONDUCT; THE MISCONDUCT IS GRAVE IF IT INVOLVES ANY OF THE ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR DISREGARD OF ESTABLISHED RULES, WHICH MUST BE PROVED BY SUBSTANTIAL EVIDENCE.—** Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence." Respondent committed grave misconduct when he intentionally

disregarded the Commission on Audit's Memorandum recommending the immediate deposit of the lotto proceeds with the bank. [R]espondent, as Chief of the Marketing and On-Line Division of the Central Operations Department, had the duty to ensure that the deposit of the lotto sales proceeds were in order.

4. **REMEDIAL LAW; APPEALS; DECISIONS OF THE OFFICE OF OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES SHOULD BE APPEALED TO THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT, AND THE COURT WILL ONLY ENTERTAIN REVIEW OF THE ASSAILED RULING WHEN THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE OFFICE OF THE OMBUDSMAN.—** We also reiterate our ruling that liberal application of the rules cannot be invoked to justify a flagrant disregard of the rules of procedure. Appeals of decisions of the Office of the Ombudsman in administrative disciplinary cases should be appealed to the Court of Appeals under Rule 43 of the Rules of Court. It is only when there is grave abuse of discretion on the part of the Office of the Ombudsman that this court will entertain review of the assailed ruling or order. The rules and jurisprudence require the dismissal of the petition before the Court of Appeals.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE PAYMENT OF BACK SALARIES DURING THE PERIOD OF SUSPENSION OF A CIVIL SERVICE MEMBER WHO IS SUBSEQUENTLY ORDERED REINSTATED IS ALLOWED IF HE OR SHE IS FOUND INNOCENT OF THE CHARGES WHICH CAUSED THE SUSPENSION AND WHEN THE SUSPENSION IS UNJUSTIFIED.—** This court in *Bangalisan v. Court of Appeals* ruled that payment of back salaries during the period of suspension of a civil service member who is subsequently ordered reinstated is allowed if "[1] he [or she] is found innocent of the charges which caused the suspension and [2] when the suspension is unjustified." The two conditions must be complied with to entitle the reinstated employee payment of back salaries. "[I]n case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal" if his or her appeal is meritorious.

6. **ID.; ID.; ID.; THE COURT OF APPEALS' ORDER OF REINSTATEMENT AND PAYMENT OF BACK SALARIES AND OTHER BENEFITS ARE NOT IMMEDIATELY EXECUTORY , AND ARE SUBJECT TO APPEAL BEFORE THE COURT.—** Unlike the Office of the Ombudsman's Decision, however, the Court of Appeals Decision and Resolution reinstating respondent in his position and ordering the payment of back salaries and other benefits were not immediately executory, and were subject to appeal to this court via Rule 45 of the Rules of Court.

7. **ID.; ID.; ID.; PUBLIC OFFICERS ARE ENTITLED TO PAYMENT OF SALARIES ONLY IF THEY RENDER SERVICE.—** PCSO's reinstatement of the respondent is without any basis. Moreover, in our Resolution dated October 13, 2014, we reversed the Court of Appeals Decision and Resolution and reinstated the Office of the Ombudsman's Decision and Order, which dismissed respondent from service. We categorically found respondent guilty of the administrative charges. Thus, it is clear the respondent cannot be considered as reinstated to this position in PCSO and entitled to back salaries during the relevant periods. It is settled that public officers are entitled to payment of salaries only if they render service. "As he [or she] works, he [or she] shall earn. Since [respondent] did not work during the period for which [he is] now claiming salaries, there can be no legal or equitable basis to order the payment of such salaries." Respondent did not perform any work during the period of November 8, 2008 to November 10, 2013. The amount he received from PCSO minus the days he reported for work in November 2013 should be returned.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Inoturan and Associates for respondent.

RESOLUTION

LEONEN, *J.*:

This resolves the following motions and manifestation filed before this court: 1) Motion for Reconsideration[1] dated December 22, 2014 filed by counsel for respondent Leovigildo Delos Reyes, Jr. (Delos Reyes) assailing this court's Resolution[2] dated October 13, 2014; and 2) Manifestation and Motion for Clarification[3] dated February 26, 2015 filed by counsel for the Philippine Charity Sweepstakes Office (PCSO).

In the Resolution dated October 13, 2014, we granted the Petition for Review on Certiorari[4] assailing the Court of Appeals Decision[5] dated March 1, 2013 and Resolution[6] dated August

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[1] *Rollo,* pp. 361-383.

[2] *Id*. at 347-360; *Hon. Office of the Ombudsman v. Delos Reyes, Jr.,* G.R. No. 208976, October 13, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/208976.pdf> [Per *J.* Leonen, Second Division].

[3] *Rollo,* pp. 387-390.

[4] *Id*. at 347, Supreme Court Resolution dated October 14, 2014; *Hon. Office of the Ombudsman v. Delos Reyes, Jr.,* G.R. No. 208976, October 13, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/208976.pdf> [Per *J.* Leonen, Second Division]. The Petition was filed under Rule 45 of the Rules of Court.

[5] *Rollo,* pp. 34-46. The Decision was penned by Associate Justice Hakim S. Abdulwahid (Chair) and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon of the Sixth Division. The Court of Appeals Decision set aside the Office of the Ombudsman's Decision (*Id*. at 51-67; the Decision dated June 10, 2006 was submitted by Graft Investigation and Prosecution Officer-1 Atty. Russell C. Labor and approved by Ombudsman Ma. Merceditas Navarro-Gutierrez) and Order (*Id*. at 68-72; the Order dated November 15, 2007 was issued by Graft Investigation and Prosecution Officer I Randolph M. Nicolas and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni) in OMB-C-A-04-0309-G, which found respondent Leovigildo Delos Reyes, Jr. guilty of grave misconduct and gross neglect of duty (*Id*. at 34, Court of Appeals Decision dated March 1, 2013).

[6] *Id*. at 48-50. The Resolution was penned by Associate Justice Hakim S. Abdulwahid (Chair) and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon of the Sixth Division.

29, 2013, and consequently dismissed Delos Reyes from service.[7] The dispositive portion of our Resolution reads:

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' decision dated March 1, 2013 and resolution dated August 29, 2013 are **REVERSED and SET ASIDE**. The Office of the Ombudsman's decision dated June 10, 2006 and order dated November 15, 2007 are **REINSTATED.** Respondent Leovigildo Delos Reyes, Jr. is **DISMISSED** from service, which includes the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.[8]

The facts of this case, as summarized in our October 13, 2014 Resolution, are:

To generate more funds in line with its mandate, the Philippine Charity Sweepstakes Office (PCSO) maintains On-line Lottery Terminals in its main office in provincial district offices. The Marketing and On-line Division of PCSO's Central Operations Department (COD) manages the terminals in the main office under Agency Number 14-5005-1. Respondent Leovigildo Delos Reyes, Jr. (Delos Reyes) served as the COD Division Chief.

On June 13, 2001, PCSO auditors submitted a consolidated report based on a surprise audit conducted on June 5, 2001. The auditors found that the cash and cash items under Delos Reyes' control were in order. However, the auditors recommended that the lotto proceeds be deposited in a bank the next working day instead of Delos Reyes keeping the lotto sales and proceeds in a safe inside his office.

On June 5, 2002, COD Manager Josefina Lao instructed OIC-Division Chief of the Liaison and Accounts Management Division Teresa Nucup (Nucup) to conduct an account validation and verification to reconcile accounts due to substantial outstanding

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[7] *Rollo,* p. 359, Supreme Court Resolution dated October 14, 2014; *Hon. Office of the Ombudsman v. Delos Reyes, Jr.,* G.R. No. 208976, October 13, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2014/october2014/208976.pdf> 13 [Per *J.* Leonen, Second Division].

[8] *Id.*

balances as of May 31, 2002. On August 16, 2002, Nucup reported that Agency No. 14-5005-1 had unremitted collections in the amount of ₱428,349.00 from May 21, 2001 to June 3, 2001. The amount was subsequently reduced to ₱387,879.00 excluding penalties.

Nucup also found that "there was a deliberate delay in the submission of the periodic sales report; that the partial remittance of total sales were made to cover previous collections; and that the unremitted collections were attributed to Cesar Lara, Cynthia Roldan, Catalino Alexandre Galang, Jr., who were all employed by [PCSO] as Lottery Operations Assistants II, and Elizabeth Driz, the Assistant Division Chief."

After conducting its own investigation, the PCSO Legal Department recommended filing formal charges against Delos Reyes and Elizabeth Driz (Driz) for dishonesty and gross neglect of duty. The PCSO Legal Department found that the Lottery Operations Assistants turned over the lotto proceeds and lotto ticket sales reports to Delos Reyes as the Division Chief. In case of his 'absence, the proceeds and reports were turned over to Driz. Driz would then deposit the proceeds in the bank. If both Delos Reyes and Driz were absent, the proceeds would be placed in the vault under Delos Reyes' control and deposited the next banking day.

On May 14, 2003, formal charges were filed against Delos Reyes and Driz, with the cases docketed as Administrative Case Nos. 03-01 and 03-02, respectively. Delos Reyes and Driz were preventively suspended for 90 days.

On June 8, 2004, PCSO filed an affidavit-complaint with the Office of the Ombudsman. Delos Reyes and Driz were criminally charged with malversation of public funds or property under Article 217 of the Revised Penal Code, and administratively charged with dishonesty and gross neglect of duty under Section 46(b)(1) and (3) of Book V of Executive Order No. 292.

After the submission of the parties' pleadings, the Office of the Ombudsman rendered the decision dated June 10, 2006 in OMB-C-A-04- 0309-G finding Delos Reyes and Driz guilty of grave misconduct and gross neglect of duty, and ordering their dismissal from service. The dispositive portion of the decision reads:

> **WHEREFORE,** premises considered, respondents, Leovigildo T. Delos Reyes, Jr. and Elizabeth G. Driz, are found guilty for Grave Misconduct and Gross Neglect of Duty, and

are thus imposed the penalty of DISMISSAL from the service, including all the accessory penalties of, cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for reemployment in the government service.

The complaint for Dishonesty filed against the respondent is however Dismissed for insufficiency of evidence.

The Honorable Rosario Uriarte, Chairman and General Manager of the Philippine Charity Sweepstakes Office, is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.

SO ORDERED.

Delos Reyes' partial motion for reconsideration was denied on November 15, 2007. He then filed before the Court of Appeals a petition for certiorari docketed as CA-G.R. SP No. 117683 under Rule 65 of the Rules of Court.

On March 1, 2013, the Court of Appeals granted the petition and reversed and set aside the Office of the Ombudsman's decision and resolution, thus:

WHEREFORE, the petition is **GRANTED** and the assailed June 10, 2006 *Decision* and November 15, 2007 *Order,* finding petitioner Leovigildo T. Delos Reyes, Jr. guilty of grave misconduct and gross neglect of duty, are **REVERSED** and **SET ASIDE**. The Philippine Charity Sweepstakes Office (PCSO) is ordered to **REINSTATE** petitioner as Chief of the Marketing and On-Line Division, Central Operations Department (COD) of the PCSO, with full backwages, retirement benefits and emoluments, and without diminution as to his seniority rights from the time of his dismissal from office until his reinstatement.

SO ORDERED.

. . . .

The Office of the Ombudsman and PCSO filed their respective motions for reconsideration. These were denied by the Court of Appeals in its resolution dated August 29, 2013.[9]

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[9] *Rollo,* pp. 348-351, Supreme Court Resolution dated October 14, 2014; *Hon. Office of the Ombudsman v. Delos Reyes, Jr.,* G.R. No. 208976, October 13, 2014 <http:/sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/208976.pdf>2-5 [Per *J.* Leonen, Second Division].

On October 13, 2014, this court rendered its Resolution.

Delos Reyes filed his Motion for Reconsideration[10] assailing this court's findings in the October 13, 2014 Resolution. Meanwhile, PCSO filed a Manifestation and Motion for Clarification[11] dated February 26, 2015.

On April 22, 2015, this court required the parties to comment on PCSO's Manifestation and Motion.[12] We also required the Office of the Ombudsman to file a comment on Delos Reyes' Motion for Reconsideration within 10 days from notice.[13] We noted the parties' separate Comments in our Resolutions dated July 15, 2015[14] and August 24, 2015.[15]

In his Motion for Reconsideration, Delos Reyes prays that the court reconsider its ruling based on the following grounds: first, there is no substantial evidence to warrant the finding that he is guilty of grave misconduct and gross neglect of duty;[16] and second, the Court of Appeals was correct "in allowing the petition for certiorari in the interest of substantial justice."[17]

As to the first ground, Delos Reyes argues that the Office of the Ombudsman committed gross misapprehension of facts as it was Elizabeth Driz (Driz), the Assistant Division Chief, who misappropriated the lotto sales proceeds through lapping of funds.[18] It was Driz who had the control and custody of the

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[10] *Rollo,* pp. 361-383.

[11] *Id*. at 387-390.

[12] *Id*. at 414, Supreme Court Resolution dated April 22, 2015.

[13] *Id*.

[14] *Id*. at 443-444. Respondent's Comment to the PCSO's Manifestation and Motion for Clarification was noted in our Resolution dated July 15, 2015.

[15] *Id*. at 477. The Office of the Solicitor General's Comment to the PCSO's Manifestation and Motion for Clarification and its Comment to respondent's Motion for Reconsideration was noted in our Resolution dated August 24, 2015.

[16] *Id*. at 362, respondent's Motion for Reconsideration.

[17] *Id*. at 378.

[18] *Id*. at 362.

proceeds.[19] Delos Reyes argues that "while it is true that [his] 'duty was to monitor, check, and reconcile reports and daily remittances of lotto sales submitted by the tellers assigned at the Main Office (where the subject unremitted collections originated) and San Marcelino Outlets,' it is likewise true that after [he] had monitored, checked, and reconciled reports and daily remittances of lotto sales submitted by the tellers, the sales proceeds were turned over to [Driz] for subsequent deposit to the bank[.]"[20] The lapping of funds occurred "after [he] had already reconciled the cash reports[.]"[21]

Moreover, the duty of detecting the discrepancies as to the lotto sales proceeds fell beyond the responsibilities of Delos Reyes as PCSO's Chief of the Marketing and On-line Division of the Central Operations Department.[22] The duty of checking the deposit of the lotto proceeds belonged to the Liaison and Accounts Management Division of the PCSO, particularly when "there were no clear-cut rules or internal control measures implemented by PCSO . . . for remittance for outlets maintained by PCSO [in the] Head Office"[23] at that time. "[I]f there is no duty then there can be no neglect of duty, much less gross neglect of duty."[24]

Similarly, Delos Reyes did not intentionally nor deliberately violate any rule or law since he did not have any duty to verify the deposits made by Driz.[25] Delos Reyes merely observed the ordinary parameters of his position.[26] Therefore, no grave

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[19] *Id*. at 366.

[20] *Id*. at 366, *citing* Supreme Court Resolution dated October 14, 2011, p. 11.

[21] *Id*. at 367.

[22] *Id*. at 368.

[23] *Id*.

[24] *Id*. at 370.

[25] *Id*. at 372.

[26] *Id*. at 372-373.

misconduct can be attributed to Delos Reyes.[27] On the contrary, substantial evidence available on record points to his innocence.[28]

In any case, assuming *arguendo* that Delos Reyes could be faulted for the acts of Driz, the penalty of dismissal from service is too harsh.[29] Delos Reyes' failure to verify the deposits should, at most, constitute simple neglect of duty.[30]

As to the second ground, Delos Reyes argues that the Court of Appeals was correct in giving due course to the Petition for Certiorari assailing the Decision and Order of the Office of the Ombudsman.[31] Technical rules are mere tools to facilitate the administration of the justice system, and the relaxation of rules is necessary when its strict and rigid application would only serve to hinder achieving substantial justice.[32] The case deserves a liberal interpretation of the rules since PCSO, "the very institution that initiated this case, sought to exculpate [Delos Reyes] from the administrative charges filed against him[.]"[33]

On petitioner's part, the Office of the Solicitor General argues that Delos Reyes' arguments are mere "reiteration of the arguments in his Comment dated March 10, 2014[.]"[34] The Office of the Solicitor General adds that Delos Reyes' Motion is a pro-forma motion that should be dismissed outright considering that the issues it raised have already been considered by this court in resolving the case.[35]

Moreover, the Office of the Solicitor General argues that there was no grave abuse of discretion in this case.[36] There was

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[27] *Id*. at 373.

[28] *Id*.

[29] *Id*. at 376-378.

[30] *Id*. at 376-377.

[31] *Id*. at 378.

[32] *Id*. at 379.

[33] *Id*.

[34] *Id*. at 459-460, Office of the Solicitor General's Comment.

[35] *Id*.

[36] *Id*. at 460-461.

substantial evidence to support the Office of the Ombudsman's finding of gross misconduct and gross neglect of duty on Delos Reyes' part.[37] The "[f]indings of fact [of] the Office of the Ombudsman[,] when supported by substantial evidence[,] are conclusive."[38]

Lastly, the Office of the Solicitor General argues that the Court of Appeals should not have entertained Delos Reyes' Petition for Certiorari as there was an adequate remedy available to him under Rule 43 of the Rules of Court.[39]

We deny the Motion for Reconsideration with finality. The issues raised in the Motion were already passed upon in our Resolution dated October 13, 2014.

Respondent Leovigildo Delos Reyes, Jr. relies heavily on PCSO's Comment[40] before the Court of Appeals and on PCSO's statements that support his innocence of the administrative charges.[41] However, he forgets the settled rule that "[f]indings of fact by the Office of the Ombudsman[,] when supported by substantial evidence[,] are conclusive."[42] As we found in our October 13, 2014 Resolution, respondent failed to show arbitrariness on the part of the Office of the Ombudsman to warrant judicial intervention.[43] Hence, our ruling in the earlier Resolution affirming the Office of the Ombudsman's findings, which states:

> It is undisputed that as Chief of the Marketing and On-Line Division of the COD, respondent was accountable for the vault and the lotto

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[37] *Id*. at 462-463.

[38] *Id*. at 464.

[39] *Id*. at 465-470.

[40] *Id*. at 278-303.

[41] *Id*. at 289-297, PCSO's Comment.

[42] Rep. Act No. 6770 (1989), Sec. 27. See *Tolentino v. Atty. Loyola, et al.,* 670 Phil. 50, 62 (2011) [Per *J.* Leonardo-de Castro, First Division].

[43] See *Dagan v. Office of the Ombudsman,* G.R. No. 184083, November 19, 2013, 709 SCRA 681, 694 [Per *J.* Perez, *En Banc*].

proceeds placed inside it. As the Division Chief, respondent had the duty to monitor, check, and reconcile the reports of the daily lotto proceeds. It is true that it was not his job to personally deposit the lotto proceeds with the bank, as this fell under Driz's responsibility. However, it was incumbent upon respondent to ensure that the lotto proceeds deposited in the bank correspond to the reports submitted to him and that the proceeds are deposited promptly.

Despite such duty, respondent willfully ignored the auditor's recommendations for prompt deposit of the lotto sales proceeds. He disregarded his duty of overseeing the deposit of the proceeds and wholly relied on Driz's representations. Respondent's act constitutes gross neglect of duty.

Similarly, records show that petitioner adduced substantial evidence to show how respondent flagrantly disregarded the rules and acted with a willful intent to violate the law, thus, amounting to grave misconduct. The Office of the Ombudsman's investigation revealed that all of the daily lotto remittances went through the hands of respondent. It also found that respondent's authorization and/or approval was required before Driz could deposit the daily lotto proceeds. Driz's alleged manipulation of the bank deposit slips and lapping of funds could not have been missed by respondent had he performed his duties. Respondent could have easily discovered the lapping of funds if he had checked the deposit records with Driz vis-a-vis the reports and lotto sales proceeds he had allegedly reconciled upon turn-over of the tellers to him.[44] (Emphasis supplied)

As acknowledged by respondent,[45] to be administratively liable for neglect of duty, the duty need not be expressly included in the respondent's job description.[46] Gross neglect of duty is "characterized by the want of even slight care, acting or omitting

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[44] *Rollo,* pp. 357-358, Supreme Court Resolution dated October 13, 2014; *Hon. Office of the Ombudsman v. Delos Reyes, Jr.,* G.R. No. 208976, October 13, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/208976.pdf> 11-12 [Per *J.* Leonen, Second Division].

[45] *Rollo,* pp. 370-371, respondent's Motion for Reconsideration.

[46] See *Philippine Retirement Authority v. Rupa,* 415 Phil. 713, 720 (2001) [Per *J.* Puno, First Division].

to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected."[47] This omission of care is that which even "inattentive and thoughtless men never fail to give to their own property."[48] "In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable."[49]

In *Land Bank of the Philippines v. San Juan, Jr.,*[50] we found the respondent guilty of gross neglect of duty and ordered his dismissal from the service for failing to ensure that his subordinates followed the correct office protocols:[51]

> The respondent further argues that the duties of opening and processing the bank's accounts fell on the shoulders of Ramirez and Amparo and were not part of his specific duties and responsibilities as Acting LBP Manager; thus, he should not be made accountable. We cannot, however, accept this excuse. *As Acting LBP Manager, the respondent had the primary duty to see to it that his employees faithfully observe bank procedures. Whether or not the opening and processing of accounts were part of his job description or not was of no moment because the respondent held a position that exercised control and supervision over his employees.*[52] (Emphasis supplied)

Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which

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[47] *Montallana v. Office of the Ombudsman, et al.,* 692 Phil. 617, 627 (2012) [Per *J.* Peralta, Third Division].

[48] *Id.*

[49] *Office of the Ombudsman v. De Leon,* 705 Phil. 26, 37-38 (2013) [Per *J.* Bersamin, First Division].

[50] 707 Phil. 365 (2013) [Per *J.* Brion, *En Banc*].

[51] *Id*. at 380.

[52] *Id*. at 378.

must be proved by substantial evidence."[53] Respondent committed grave misconduct when he intentionally disregarded the Commission on Audit's Memorandum recommending the immediate deposit of the lotto proceeds with the bank. At the risk of being repetitive, respondent, as Chief of the Marketing and On-Line Division of the Central Operations Department, had the duty to ensure that the deposit of the lotto sales proceeds were in order.

We also reiterate our ruling that liberal application of the rules cannot be invoked to justify a flagrant disregard of the rules of procedure.[54] Appeals of decisions of the Office of the Ombudsman in administrative disciplinary cases should be appealed to the Court of Appeals under Rule 43 of the Rules of Court.[55] It is

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[53] *Atty. Valera v. Office of the Ombudsman, et al.,* 570 Phil. 368, 385 (2008) [Per *C.J.* Puno, First Division].

[54] See *Prudential Guarantee and Assurance, Inc. v. Court of Appeals,* 480 Phil. 134, 139-140 (2004) [Per *J.* Carpio Morales, Third Division].

[55] See *Fabian v. Hon. Desierto,* 356 Phil. 787, 804 (1998) [Per *J.* Regalado, *En Banc*]; *Namuhe v. The Ombudsman,* 358 Phil. 781, 788-789 (1998) [Per *J.* Panganiban, First Division]; *Nava v. National Bureau of Investigation,* 495 Phil. 354, 365-366 (2005) [Per *J.* Tinga, Second Division]; and *Dr. Pia v. Hon. Gervacio, Jr., et al.,* 710 Phil. 196, 203 (2013) [Per *J.* Reyes, First Division]; RULES OF COURT, Rule 43, Sec. 1 provides:

RULE 43. Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals SECTION 1. Scope – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

only when there is grave abuse of discretion on the part of the Office of the Ombudsman that this court will entertain review of the assailed ruling or order.[56] The rules and jurisprudence require the dismissal of the petition before the Court of Appeals.

We now resolve the Manifestation and Motion for Clarification dated February 26, 2015 filed by PCSO.

PCSO seeks clarification as to the specific consequences of respondent's dismissal from the service in light of PCSO's payment of his back salaries. PCSO alleges that:

4. While the petitioner filed the present petition before the Court, the PCSO acting in good faith according to the CA rulings, reinstated the respondent effective 10 October 2013 pursuant to Board Resolution No. 260, S. 2013 and Special Order No. 2013-179.

5. Based on the Assumption of Duties and Responsibilities issued by Atty. Roman C. Torres, Manager, PCSO Security Printing and Production Department, the respondent reported for work on 11 November 2013. Further, the PCSO Accounting and Budget Department computed his salaries and other benefits covering the period from 8 November 2008 to 30 November 2013. He was correspondingly paid his back salaries as shown from the Disbursement Voucher and Check No. 0000211427 issued in his name in the amount [of] **Four Million Four Hundred Fifty One Thousand Eight Hundred Ninety Three And 13/100 Pesos (Php 4,451,893.13).**

6. However, with the present Resolution, the PCSO has a duty to raise before this Court PCSO's actions and the matter of the respondent's entitlement to back salaries, which was not passed upon in its ruling. PCSO respectfully seeks clarification of this Court's Resolution to establish the respondent's entitlement to back salaries despite his dismissal from service and the reversal of the CA rulings ordering

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[56] See *Dagan v. Office of the Ombudsman,* G.R. No. 184083, November 19, 2013, 709 SCRA 681, 694 [Per *J.* Perez, *En Banc*]. The case involved a Petition for *Certiorari* under Rule 65 of the Rules of Court, assailing the Ombudsman's Decision in an administrative case exonerating respondents (*Id.* at 687).

the award of back salaries.[57] (Emphasis in the original, citations omitted)

In its Comment[58] on the PCSO's Manifestation and Motion for Clarification, the Office of the Solicitor General argues that PCSO had no legal basis to reinstate respondent and award him his salaries.[59] "The [D]ecision of the Ombudsman should have been implemented pending respondent's appeal to the Court of Appeals and the Supreme Court[,]"[60] as an appeal does "not stop the decision from being executory."[61] This is even more so in this case, as respondent availed himself of the wrong remedy before the Court of Appeals.

As to respondent's entitlement to back salaries, the Office of the Solicitor General argues that the general rule is that public officials who do not render any service are not entitled to compensation.[62] Back salaries are awarded only if the public official is exonerated of the charge or his or her dismissal is found to be illegal.[63]

In his Comment[64] on PCSO's Manifestation and Motion for Clarification, respondent argues that PCSO paid his backwages in good faith and under PCSO's findings that he was innocent of the charges.[65] According to respondent:

In sum, when PCSO paid the backwages of [D]elos Reyes, it did so under the directive of the Court of Appeals which reversed the decision

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[57] *Rollo,* p. 388, PCSO's Manifestation and Motion for Clarification.

[58] *Id*. at 445-453.

[59] *Id*. at 446.

[60] *Id*. at 447.

[61] *Id*.

[62] *Id*. at 449-450, citing *Civil Service Commission v. Cruz,* 670 Phil. 638, 648 (2011) [Per *J.* Brion, *En Banc*].

[63] *Id*. at 450-451, citing *Civil Service Commission v. Cruz,* 670 Phil. 638, 648 (2011) [Per *J.* Brion, *En Banc*].

[64] *Id*. at 425-432.

[65] *Id*. at 430.

of the Office of the Ombudsman. PCSO had acted in utter good faith. On the other hand, Delos Reyes when he accepted the payment of backwages, he was also doing it in good faith because by virtue of the reversal of the decision of the Office of the Ombudsman, he was able to prove his innocence from the administrative charges against him. It was a welcome and much needed break for him and his family, which for seven (7) years had been deprived of his salary and became dependent on the generosity of his wife[.][66]

PCSO invokes this court's ruling in *Civil Service Commission v. Cruz*[67] in claiming that respondent was not entitled to back salaries as he was found guilty of the administrative charges.[68]

This court in *Bangalisan v. Court of Appeals*[69] ruled that payment of back salaries during the period of suspension of a civil service member who is subsequently ordered reinstated is allowed if "[1] he [or she] is found innocent of the charges which caused the suspension and [2] when the suspension is unjustified."[70] The two conditions must be complied with to entitle the reinstated employee payment of back salaries. "[I]n case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal"[71] if his or her appeal is meritorious.

PCSO claims that the amount of back salaries given to respondent covers the period of November 8, 2008 to November 30, 2013.[72]

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[66] *Id*.

[67] 670 Phil. 638 (2011) [Per *J.* Brion, *En Banc*].

[68] *Rollo,* pp. 388-389, PCSO's Manifestation and Motion for Clarification.

[69] *Bangalisan v. Court of Appeals,* 342 Phil. 586 (1997) [Per *J.* Regalado, *En Banc*].

[70] *Id*. at 598, *citing Engr. Miranda v. Commission on Audit,* 277 Phil. 748, 753 (1991) [Per *J.* Paras, *En Banc*]; *Abellera v. City of Baguio, et al.,* 125 Phil. 1033, 1037 (1967) [Per *J.* J.B.L. Reyes, *En Banc*]; and *Tañala v. Legaspi, et al.,* 121 Phil. 541, 551-552 (1965) [Per *J.* Zaldivar, *En Banc*].

[71] 1987 Adm. Code, Book V, Chap. 7, Sec. 47(4), as cited in *Civil Service Commission v. Cruz,* 670 Phil. 638, 646 (2011) [Per *J.* Brion, *En Banc*].

[72] *Rollo,* pp. 388, PCSO's Manifestation and Motion for Clarification, and 411, respondent's Summary of Salaries/Other Benefits and Deductions from PCSO's Accounting and Budget Department.

The Decision of the Office of the Ombudsman dismissing respondent from the service was rendered on June 10, 2006.[73] The Office of the Ombudsman denied the Motion for Reconsideration on November 15, 2007.[74] Respondent should have been dismissed from the service as early as 2006 following the immediately executory nature of the Office of the Ombudsman's Decision.[75]

In *Yarcia v. City of Baguio,*[76] the Civil Service Commissioner found the petitioner administratively liable for dishonesty and was ordered dismissed from the service.[77] The Decision was immediately executory pending appeal to the Civil Service Board of Appeals.[78] The Board did not exonerate the petitioner, but it imposed a fine equivalent to six (6) months' pay.[79] Undaunted, the petitioner asked for payment of his back salaries for the period covering his separation up to his reinstatement.[80] This court, citing *Villamor, et al. v. Hon. Lacson, et al.,*[81] held that:

> "[I]t will be noted also that the modified decision did not exonerate the petitioners. And if We take into account the fact that they did not work during the period for which they are now claiming salaries, there can be no legal or equitable basis to order the payment of their salaries. The general proposition is that a public official is

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[73] *Id*. at 65, Office of the Ombudsman's Decision.

[74] *Id*. at 71, Office of the Ombudsman's Order.

[75] See OMBUDSMAN, Memo. Circ. No. 01, series of 2006, in relation to Rep. Act No. 6770, Sec. 27, par. 1 and RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule III, Sec. 7. Under this Memorandum Circular, all concerned offices are "enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof[.]"

[76] 144 Phil. 351 (1970) [Per *J.* Teehankee, *En Banc*].

[77] *Id*. at 354-355.

[78] *Id*. at 355.

[79] *Id*.

[80] *Id*. at 356.

[81] 120 Phil. 1213, 1219 (1964) [Per *J.* Paredes, *En Banc*].

not entitled to any compensation if he has not rendered any service. As you work, so shall you earn. And even if We consider the punishment as suspension, before a public official or employee is entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee was innocent of the charges preferred against him. (F. B. Reyes *vs*. J. Hernandez, 71 Phil. 397), which is not the case in the instant proceedings."

. . . Here, the Civil Service Board of Appeals, in affirming the guilt of plaintiff but modifying the penalty of dismissal from the service to a fine equivalent to six (6) months' pay similarly connoted that although dismissal would be the proper penalty, it considered plaintiff's separation from work for the period covered of almost three years plus a six months fine as sufficient punishment. *But the appeals board's modified decision did not exonerate the plaintiff nor did it affect the validity of his dismissal or separation from work pending appeal, as ordered by the Civil Service Commissioner. Such separation from work pending his appeal remained valid and effective until it was set aside and modified with the imposition of the lesser penalty, by the appeals board.*[82] (Emphasis supplied)

Unlike the Office of the Ombudsman's Decision, however, the Court of Appeals Decision and Resolution reinstating respondent in his position and ordering the payment of back salaries and other benefits were not immediately executory, and were subject to appeal to this court via Rule 45 ofthe Rules of Court.

PCSO's reinstatement of the respondent is without any basis.

Moreover, in our Resolution dated October 13, 2014, we reversed the Court of Appeals Decision and Resolution and reinstated the Office of the Ombudsman's Decision and Order, which dismissed respondent from service. We categorically found respondent guilty of the administrative charges. Thus, it is clear that respondent cannot be considered as reinstated to his position in PCSO and entitled to back salaries during the relevant periods.

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[82] *Yarcia v. City of Baguio,* 144 Phil. 351, 358-359 (1970) [Per *J.* Teehankee, *En Banc*].

It is settled that public officers are entitled to payment of salaries only if they render service.[83] "As he [or she] works, he [or she] shall earn. Since [respondent] did not work during the period for which [he is] now claiming salaries, there can be no legal or equitable basis to order the payment of such salaries."[84] Respondent did not perform any work during the period of November 8, 2008 to November 10, 2013.[85] The amount he received from PCSO minus the days he reported for work in November 2013 should be returned.

WHEREFORE, the Motion for Reconsideration is **DENIED with FINALITY.** The Resolution dated October 13, 2014 is **AFFIRMED with MODIFICATION** in that respondent Leovigildo Delos Reyes is not entitled to payment of back salaries and is hereby ordered to return any amount received as back salaries and benefits covering the period of November 8, 2008 to November 10, 2013 from the Philippine Charity Sweepstakes Office.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

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[83] See *Yarcia v. City of Baguio,* 144 Phil. 351, 358-359 (1970) [Per *J.* Teehankee, *En Banc*]; and *Civil Service Commission v. Cruz,* 670 Phil. 638, 646 (2011) [Per *J.* Brion, *En Banc*].

[84] *Bangalisan v. Court of Appeals,* 342 Phil. 586, 599 (1997) [Per *J.* Regalado, *En Banc*].

[85] *Rollo,* p. 388, PCSO's Manifestation and Motion for Clarification. According to PCSO, respondent reported for work on November 11, 2013. However, the computation for back salaries and the corresponding check issued to respondent pertained to the period of November 8, 2008 to November 30, 2013.

EN BANC

[A.C. No. 10945. February 23, 2016]
(Formerly CBD 09-2507)

ANGELITO RAMISCAL and MERCEDES ORZAME, *complainants, vs.* **ATTY. EDGAR S. ORRO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE RELATIONSHIP OF THE LAWYER AND THE CLIENT BECOMES IMBUED WITH TRUST AND CONFIDENCE FROM THE MOMENT THAT THE LAWYER-CLIENT RELATIONSHIP COMMENCES, WITH THE LAWYER BEING BOUND TO SERVE HIS CLIENTS WITH FULL COMPETENCE, AND TO ATTEND TO THEIR CAUSE WITH UTMOST DILIGENCE, CARE AND DEVOTION AND A LAWYER WHO NEGLECTS TO PERFORM HIS OBLIGATIONS VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH.—** Every lawyer, upon becoming a member of the Philippine Bar, solemnly takes the Lawyer's Oath, by which he vows, among others, that: "*I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients*." If he should violate the vow, he contravenes the *Code of Professional Responsibility*, particularly its Canon 17, and Rules 18.03 and 18.04 of Canon 18. x x x. It is beyond debate, therefore, that the relationship of the lawyer and the client becomes imbued with trust and confidence from the moment that the lawyer-client relationship commences, with the lawyer being bound to serve his clients with full competence, and to attend to their cause with utmost diligence, care and devotion. To accord with this highly fiduciary relationship, the client expects the lawyer to be always mindful of the former's cause and to be diligent in handling the former's legal affairs. As an essential part of their highly fiduciary relationship, the client is entitled to the periodic and full updates from the lawyer on the developments of the case. The lawyer who neglects to perform his obligations violates Rule 18.03 of Canon 18 of

the *Code of Professional Responsibility*. As a member of the Law Profession in the Philippines, the respondent had the foregoing professional and ethical burdens. But he obviously failed to discharge his burdens to the best of his knowledge and discretion and with all good fidelity to his clients.

2. **ID.; ID.; ID.; A LAWYER SHOULD CONDUCT HIMSELF AS A PERSON OF THE HIGHEST MORAL AND PROFESSIONAL INTEGRITY AND PROBITY IN HIS DEALINGS WITH OTHERS, AND SHOULD NEVER FORGET THAT HIS DUTY TO SERVE HIS CLIENTS WITH UNWAVERING LOYALTY AND DILIGENCE CARRIED WITH IT THE CORRESPONDING RESPONSIBILITIES TOWARDS THE COURT, TO THE BAR, AND TO THE PUBLIC IN GENERAL.—** We further underscore that the respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.

3. **ID.; ID.; ID.; A LAWYER IS GUILTY OF MISCONDUCT SUFFICIENT TO JUSTIFY HIS SUSPENSION OR DISBARMENT IF HE SO ACTS AS TO BE UNWORTHY OF THE TRUST AND CONFIDENCE INVOLVED IN HIS OFFICIAL OATH AND IS FOUND TO BE WANTING IN THAT HONESTY AND INTEGRITY THAT MUST CHARACTERIZE THE MEMBERS OF THE BAR IN THE PERFORMANCE OF THEIR PROFESSIONAL DUTIES; PROPER PENALTY.—** There can be no question that a lawyer is guilty of misconduct sufficient to justify his suspension or disbarment if he so acts as to be unworthy of the trust and confidence involved in his official oath and is found to be

wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties. Based on all the circumstances in this case, we approve the recommendation of the IBP for the respondent's suspension from the practice of law for a period of two years. Although the Court imposed a six-month suspension from the practice of law on lawyers violating Canons 17 and 18 of the *Code of Professional Responsibility,* the recommended penalty is condign and proportionate to the offense charged and established because his display of disrespectful defiance of the orders of the IBP aggravated his misconduct.

D E C I S I O N

BERSAMIN, *J.*:

The fiduciary duty of every lawyer towards his client requires him to conscientiously act in advancing and safeguarding the latter's interest. His failure or neglect to do so constitutes a serious breach of his Lawyer's Oath and the canons of professional ethics, and renders him liable for gross misconduct that may warrant his suspension from the practice of law.

Antecedents

Complainants Spouses Angelito Ramiscal and Mercedes Orzame (Ramiscals) engaged the legal services of respondent Atty. Edgar S. Orro to handle a case in which they were the defendants seeking the declaration of the nullity of title to a parcel of land situated in the Province of Isabela.[1] Upon receiving the ₱10,000.00 acceptance fee from them, the respondent handled the trial of the case until the Regional Trial Court (RTC) decided it in their favor. As expected, the plaintiffs appealed to the Court of Appeals (CA), and they ultimately filed their appellants' brief. Upon receipt of the appellants' brief, the respondent requested from the complainants an additional amount of ₱30,000.00 for the preparation and submission of their appellees' brief in the CA. They obliged and paid him the amount requested.[2]

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[1] *Rollo,* pp. 8-24.

[2] *Id.* at 4.

Later on, the CA reversed the decision of the RTC. The respondent did not inform the Ramiscals of the adverse decision of the CA which they only learned about from their neighbors. They endeavored to communicate with the respondent but their efforts were initially in vain. When they finally reached him, he asked an additional ₱7,000.00 from them as his fee in filing a motion for reconsideration in their behalf, albeit telling them that such motion would already be belated. Even so, they paid to him the amount sought. To their dismay, they later discovered that he did not file the motion for reconsideration; hence, the decision attained finality, eventually resulting in the loss of their property measuring 8.479 hectares with a probable worth of ₱3,391,600.00.[3]

Consequently, the Ramiscals brought this administrative complaint against the respondent. The Court referred the complaint to the Integrated Bar of the Philippines (IBP) for appropriate evaluation, report and recommendation.[4]

Findings and Recommendation of the IBP

Despite due notice, the Ramiscals and the respondent did not appear during the scheduled mandatory conferences set by the IBP. Neither did they submit their respective evidence.

IBP Commissioner Hector B. Almeyda rendered his findings to the effect that the respondent had violated Canon 18, Rules 18.03 and 18.04 of the *Code of Professional Responsibility*, and recommended his suspension from the practice of law for one year.[5]

On October 11, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-829,[6] whereby it adopted the report of IBP Commissioner Almeyda but modified his recommendation of the penalty by increasing the period of suspension to two years, to wit:

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[3] *Id.* at 5-6.

[4] *Id.* at 2.

[5] *Id.* at 52-55.

[6] *Id.* at 51.

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED ***with modification*** *the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and for violation of Canon 18 of the Code of Professional Responsibility aggravated by his disregard of the notices from the Commission and considering the extent of the damage suffered by Complainant, Atty. Edgar S. Orro is hereby* ***SUSPENDED from the practice of law for two (2) years****.*

Ruling of the Court

We agree with the IBP's findings that the respondent did not competently and diligently discharge his duties as the lawyer of the Ramiscals.

Every lawyer, upon becoming a member of the Philippine Bar, solemnly takes the Lawyer's Oath, by which he vows, among others, that: "*I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients*." If he should violate the vow, he contravenes the *Code of Professional Responsibility*, particularly its Canon 17, and Rules 18.03 and 18.04 of Canon 18, *viz*.:

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

It is beyond debate, therefore, that the relationship of the lawyer and the client becomes imbued with trust and confidence from the moment that the lawyer-client relationship commences,

with the lawyer being bound to serve his clients with full competence, and to attend to their cause with utmost diligence, care and devotion.[7] To accord with this highly fiduciary relationship, the client expects the lawyer to be always mindful of the former's cause and to be diligent in handling the former's legal affairs.[8] As an essential part of their highly fiduciary relationship, the client is entitled to the periodic and full updates from the lawyer on the developments of the case.[9] The lawyer who neglects to perform his obligations violates Rule 18.03 of Canon 18 of the *Code of Professional Responsibility*.[10]

As a member of the Law Profession in the Philippines, the respondent had the foregoing professional and ethical burdens. But he obviously failed to discharge his burdens to the best of his knowledge and discretion and with all good fidelity to his clients. By voluntarily taking up their cause, he gave his unqualified commitment to advance and defend their interest therein. Even if he could not thereby guarantee to them the favorable outcome of the litigation, he reneged on his commitment nonetheless because he did not file the motion for reconsideration in their behalf despite receiving from them the ₱7,000.00 he had requested for that purpose. He further neglected to regularly update them on the status of the case, particularly on the adverse result, thereby leaving them in the dark on the proceedings that were gradually turning against their interest. Updating the clients could have prevented their substantial prejudice by enabling them to engage another competent lawyer to handle their case. As it happened, his neglect in that respect lost for them whatever legal remedies were then available. His various omissions manifested his utter lack of professionalism towards them.

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[7] *Voluntad-Ramirez v. Bautista,* A.C. No. 6733, October 10, 2012, 683 SCRA 327, 333.

[8] *Caranza Vda. de Saldivar v. Cabanes, Jr.*, A.C. No. 7749, July 8, 2013, 700 SCRA 734, 741.

[9] *Credito v. Sabio*, A.C. No. 4920, October 19, 2005, 473 SCRA 301, 310.

[10] *Ylaya v. Gacott*, A.C. No. 6475, January 30, 2013, 689 SCRA 452, 479.

We further underscore that the respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession.[11] He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others.[12] He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.[13]

There can be no question that a lawyer is guilty of misconduct sufficient to justify his suspension or disbarment if he so acts as to be unworthy of the trust and confidence involved in his official oath and is found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties.[14] Based on all the circumstances in this case, we approve the recommendation of the IBP for the respondent's suspension from the practice of law for a period of two years. Although the Court imposed a six-month suspension from the practice of law on lawyers violating Canons 17 and 18 of the *Code of Professional Responsibility*,[15] the recommended penalty is condign and proportionate to the

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[11] *Meneses v. Macalino*, A.C. No. 6651, February 27, 2006, 483 SCRA 212, 220.

[12] *Ong v. Atty. Delos Santos,* A.C. No. 10179 (Formerly CBD 11-2985), March 4, 2014.

[13] *Camara v. Reyes*, A.C. No. 6121, July 31, 2009, 594 SCRA 484, 490.

[14] *In Re Wells*, 168 S.W. 2d 730, 732, 293 Ky. 201, 204 (1943).

[15] *Brunet v. Guaren*, A.C. No. 10164, March 10, 2014, 718 SCRA 224, 227*; Penilla v. Alcid, Jr.*, A.C. No. 9149, September 4, 2013, 705 SCRA 1, 9.

offense charged and established because his display of disrespectful defiance of the orders of the IBP aggravated his misconduct.

ACCORDINGLY, the Court **FINDS** and **DECLARES** respondent **ATTY. EDGAR S. ORRO** guilty of violating Canon 17, and Rules 18.03 and 18.04 of the *Code of Professional Responsibility*; and **SUSPENDS** him from the practice of law for a period for **TWO YEARS EFFECTIVE UPON NOTICE**, with the **STERN WARNING** that any similar infraction in the future will be dealt with more severely.

Let copies of this decision be furnished to the Office of the Bar Confidant, to be appended to the respondent's personal record as an attorney; to the Integrated Bar of the Philippines; and to all courts in the Philippines for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on leave.

EN BANC

[A.M. No. P-15-3361. February 23, 2016]
(Formerly OCA IPI No. 10-3381-P)

ATTY. JOHN V. AQUINO, *petitioner, vs.* **ELENA S. ALCASID, Clerk III, Regional Trial Court, Office of the Clerk of Court, Olongapo City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE ACTS OF STEALING AND DISCOUNTING THE CHECK OF A CO-EMPLOYEE AMOUNT TO GRAVE MISCONDUCT AND SERIOUS DISHONESTY, AND VIOLATE THE TIME-HONORED CONSTITUTIONAL PRINCIPLE THAT A PUBLIC OFFICE IS A PUBLIC TRUST.—** Alcasid has shown herself unfit for the confidence and trust demanded by her public office when she stole and discounted Batalla's check. Her acts amounted to grave misconduct and serious dishonesty, and violated the time-honored constitutional principle that a public office is a public trust. Dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office.

2. **ID.; ID; ID.; NEGLIGENCE IN THE CUSTODY OF THE CHECKS CONSTITUTES INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES.—** [W]hile there is no direct evidence to show that the UCPB account in which the other missing checks were deposited belongs to Alcasid, she nevertheless is liable for the loss thereof. Being the one in custody of the said checks, she is accountable for the loss of the same. As pointed out by the Court Administrator, Alcasid's negligence in the custody of the said checks constitutes inefficiency and incompetence in the performance of official duties.

3. **ID.; ID.; ID.; GRAVE MISCONDUCT, DISHONESTY, INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES ARE CONSIDERED GRAVE OFFENSES; PROPER PENALTY. —** Under Section 46(A) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct and dishonesty are considered grave offenses and are punishable by dismissal from the service. On the other hand, inefficiency and incompetence in the performance of official duties, under Section 46(B) of the RRACCS, is likewise considered a grave offense and is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. Pursuant to Section

50 of the RRACCS, considering that Alcasid is found guilty of two charges, the penalty that should be imposed upon her is that corresponding to the most serious charge, *i.e.,* grave misconduct and dishonesty, and the penalty for inefficiency and incompetence in the performance of official duties shall be considered as an aggravating circumstance. The penalty of dismissal from the service shall result in the permanent separation of the respondent from the service, without prejudice to criminal or civil liability and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint[1] filed by Atty. John V. Aquino (Atty. Aquino) with the Office of the Court Administrator (OCA) against respondent Elena S. Alcasid (Alcasid), Clerk III at the Office of the Clerk of Court (OCC), Regional Trial Court (RTC) of Olongapo City, for grave misconduct and serious dishonesty.

The Facts

Atty. Aquino is a Clerk of Court VI at the OCC in the RTC of Olongapo City. He alleged that the release of the checks of all the employees of the RTC of Olongapo City was the duty of Jennifer Decano (Decano), Clerk IV at the RTC of Olongapo City. It had been the standard operating procedure in their office that upon receipt of the checks, Atty. Aquino would personally open the envelopes or assign another employee to open the same under his supervision. The checks would then be counted and, if no payroll is attached, a document containing a list of all employees, their respective check numbers, and the amount thereof would be prepared. The employees of the RTC of Olongapo City would then personally receive their checks at the OCC.

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[1] *Rollo*, pp. 1-4.

Atty. Aquino claimed that sometime in January 2008, while Decano was on leave, Alcasid volunteered to release the checks of the employees of the RTC of Olongapo City. That since March 2008 up to March 2010, Victoria Meru and Rosalyn Bayona, Utility Worker and Clerk III, respectively, in the RTC of Olongapo City, were assigned to count the checks while Alcasid prepared the list. All unclaimed checks were entrusted to and kept by Alcasid.

When Felix Mores (Mores), an employee of the RTC of Olongapo City, died in September 2009, Atty. Aquino instructed Alcasid to give the checks intended for Mores to Decano so that she may formally return the checks to the Court. Atty. Aquino claimed that Alcasid failed to turn over the checks to Decano.

Sometime in March 2010, Arlene Batalla (Batalla), Mediation Staff Officer V at the RTC of Olongapo City, approached Atty. Aquino informing him that she had not received the check for her salary for the period of June 16 to 30, 2009. Atty. Aquino asked Alcasid to look for Batalla's check, but the latter could not produce the same.

Atty. Aquino, with the help of Decano, immediately conducted an investigation on Batalla's missing check. Upon scrutiny of the payrolls and the unclaimed checks, Atty. Aquino discovered that, aside from Batalla's missing check, the checks intended for Mores and the deceased Ludivine Mapili (Mapili) were missing. The missing check that was issued to Batalla for her salary for the period of June 16 to 30, 2009 amounted to ₱3,361.94. There were five missing checks that were issued to Mapili with an aggregate amount of ₱24,017.00. On the other hand, there were also five missing checks that were issued to Mores, three of which amounted to ₱13,771.42. Two of the missing checks that were issued to Mores were for unknown amounts.

On March 19, 2010, Atty. Aquino sent Alcasid a Memorandum,[2] requiring her to explain the loss of the said checks and to return the same. In her letter[3] to Atty. Aquino, Alcasid claimed that she placed the missing checks inside the cabinet where the docket

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[2] *Id.* at 5.

[3] *Id.* at 6-7.

books and notarial documents are kept. That it was only in the first week of March 2010 that she learned that the said checks were already missing and that she could no longer find the same despite diligent efforts.

Upon further inquiry from the Fiscal Management Office (FMO) of the Court, Atty. Aquino found out that the missing check that was issued to Batalla was discounted at Aligan Sarmiento Store in San Narciso, Zambales. Alejandro Aligan (Aligan), the owner of the Aligan Sarmiento Store, who issued a sworn affidavit[4] and positively identified Alcasid as the one who discounted several checks issued to different persons starting in July 2009. Atty. Aquino claimed that of all the employees in the OCC of the RTC of Olongapo City, it is only Alcasid who lives in San Narciso, Zambales. He further alleged that the missing checks were either discounted or deposited in a bank account in United Coconut Planters Bank (UCPB), Olongapo Branch.

Atty. Aquino also found out that the check that was issued to Nilda Suarez (Suarez), a Stenographer in the RTC of Olongapo City, Branch 73, was likewise missing but the latter did not report the incident to the OCC since Alcasid promised her that she would just pay the amount of the check.

In her Comment,[5] Alcasid denied that she discounted and/or deposited in her account the said missing checks. She insisted that she placed the missing checks, which were all unclaimed, inside the cabinet in their office. She insisted that she was not the only one who had access to the cabinet where she placed the missing checks. She pointed out that it was unfair to put the blame on her just because she resides in San Narciso, Zambales; that there are other employees of the RTC of Olongapo City who reside therein.

She likewise presented a handwritten letter,[6] dated July 1, 2010, supposedly signed by Aligan, stating that he does not know

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[4] *Id*. at 8-9.

[5] *Id*. at 34-35.

[6] *Id*. at 36.

who discounted the missing check that was issued to Batalla. Alcasid also denied having paid Suarez the amount of the check that was issued to the latter. Alcasid claimed that Suarez borrowed from her the amount of ₱1,500.00 as she needed to go to Manila.

On November 18, 2013, the Court issued a Resolution,[7] which referred the case to the Executive Judge of the RTC of Olongapo City for investigation, report and recommendation.

Findings of the Executive Judge

On December 22, 2014, Executive Judge Richard A. Paradeza (EJ Paradeza) issued a Report and Recommendation,[8] recommending that Alcasid be held administratively liable for grave misconduct and dishonesty. EJ Paradeza pointed out that the missing checks were indeed entrusted by Atty. Aquino to Alcasid, which the latter did not deny. He averred that upon verification with the FMO of the Court, the missing check that was issued to Batalla was discounted at the Aligan Sarmiento Store in San Narciso, Zambales, where Alcasid resides. That Aligan identified Alcasid, through a picture shown to him, as the one who discounted the missing check issued to Batalla. EJ Paradeza opined that, with Aligan's positive identification of Alcasid, the logical conclusion is that it was Alcasid who took and discounted the missing check issued to Batalla.[9]

As regards the July 1, 2010 handwritten letter of Aligan, wherein he supposedly denied knowing the person who discounted the missing check issued to Batalla, EJ Paradeza pointed out that Aligan had satisfactorily explained why he wrote the letter.[10] Aligan explained that the contents of the said letter were dictated to him by Alcasid; that Alcasid would not leave his store unless he writes the said letter; and that he conceded so that Alcasid would stop disturbing his store operations.[11]

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[7] *Id*. at 42.

[8] *Id*. at 267-285.

[9] *Id*. at 284.

[10] *Id*.

[11] *Id*. at 278.

On March 16, 2015, the Court referred the Report and Recommendation of EJ Paradeza to the OCA for evaluation, report and recommendation.[12]

Findings of the OCA

On June 16, 2015, the Court Administrator issued a Memorandum,[13] which similarly recommended that Alcasid be found guilty of grave misconduct, serious dishonesty, conduct unbecoming a court employee and inefficiency and incompetence in the performance of official duties. The Court Administrator pointed out that there is sufficient evidence to establish that the missing check of Batalla was unlawfully encashed by Alcasid for her own benefit.[14]

The Court Administrator clarified that Alcasid could not be held accountable for the deposit of the other missing checks in a single UCPB account since there is no direct evidence showing that the said UCPB account is Alcasid's bank account. Nevertheless, the Court Administrator opined that Alcasid should be held accountable for the loss of the said missing checks since the same were in her custody.[15]

The Issue

The issue for the Court's resolution is whether Alcasid is guilty of grave misconduct and dishonesty.

Ruling of the Court

After a careful review of the records of this case, the Court adopts the findings and recommendations of EJ Paradeza and the Court Administrator.

Indeed, there is sufficient evidence to show that Alcasid was the one who took Batalla's missing check and had it discounted

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[12] *Id*. at 287.

[13] *Id*. at 288-292.

[14] *Id*. at 291.

[15] *Id*. at 291-292.

at Aligan Sarmiento Store. Alcasid was positively identified by Aligan as the one who discounted Batalla's missing check. That Aligan subsequently executed a letter wherein he denied knowledge as to the identity of the person who discounted the said check does not cast doubt on the veracity of the allegations against Alcasid. As pointed out by EJ Paradeza, Aligan only executed the said letter so that Alcasid would cease from disturbing his business.

Alcasid has shown herself unfit for the confidence and trust demanded by her public office when she stole and discounted Batalla's check. Her acts amounted to grave misconduct and serious dishonesty, and violated the time-honored constitutional principle that a public office is a public trust.[16] Dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office.[17]

Further, while there is no direct evidence to show that the UCPB account in which the other missing checks were deposited belongs to Alcasid, she nevertheless is liable for the loss thereof. Being the one in custody of the said checks, she is accountable for the loss of the same. As pointed out by the Court Administrator, Alcasid's negligence in the custody of the said checks constitutes inefficiency and incompetence in the performance of official duties.[18]

Under Section 46(A) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct and dishonesty are considered grave offenses and are punishable by dismissal from the service. On the other hand, inefficiency and incompetence in the performance of official duties, under Section 46(B) of the RRACCS, is likewise considered a grave offense and is punishable by suspension of six (6) months and

[16] *Re: Loss of Extraordinary Allowance of Judge Jovellanos*, 441 Phil. 261, 269 (2002).

[17] *Civil Service Commission v. Cortez*, 474 Phil. 670, 690 (2004).

[18] *Rollo*, pp. 291-292.

one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense.

Pursuant to Section 50 of the RRACCS, considering that Alcasid is found guilty of two charges, the penalty that should be imposed upon her is that corresponding to the most serious charge, *i.e.*, grave misconduct and dishonesty, and the penalty for inefficiency and incompetence in the performance of official duties shall be considered as an aggravating circumstance.

The penalty of dismissal from the service shall result in the permanent separation of the respondent from the service, without prejudice to criminal or civil liability[19] and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.[20]

WHEREFORE, the Court finds respondent Elena S. Alcasid, Clerk III at the Office of the Clerk of Court, Regional Trial Court of Olongapo City, **GUILTY** of grave misconduct, serious dishonesty, and inefficiency and incompetence in the performance of official duties and hereby orders her **DISMISSAL** from the service with forfeiture of all retirement benefits which she may be entitled to, if any, with prejudice to re-employment in the government, including government-owned and controlled corporations.

This Decision is immediately executory. The Office of the Court Administrator shall see to it that a copy of this Decision be immediately served upon Elena S. Alcasid.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on leave.

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[19] Revised Rules on Administrative Cases in the Civil Service, Section 51(a).

[20] *Id*. at Section 52(a).

EN BANC

[A.M. No. P-15-3393. February 23, 2016]
(Formerly OCA IPI No. 13-4055-P)

SEGUNDINA P. NOCES-DE LEON and LEONOR P. ALAVE, *petitioners, vs.* **TERENCIO G. FLORENDO, Sheriff IV, Branch 21, Regional Trial Court, Vigan City, Ilocos Sur,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MUST AVOID ANY IMPRESSION OF IMPROPRIETY, MISDEED OR NEGLIGENCE IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS.—** In several occasions, this Court had emphasized the heavy burden and responsibility of Court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. Thus, this Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.

2. **ID.; ID.; ID.; PROHIBITED FROM SOLICITING OR ACCEPTING ANY GIFT, FAVOR OR BENEFIT BASED ON ANY EXPLICIT OR IMPLICIT UNDERSTANDING THAT SUCH GIFT, FAVOR OR BENEFIT SHALL INFLUENCE THEIR OFFICIAL ACTIONS; VIOLATION THEREOF CONSTITUTES GRAVE MISCONDUCT AND DISHONESTY.—** Soliciting is prohibited under Section 2, Canon I of the Code of Conduct for Court Personnel which provides that "Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions," while Section 2(e), Canon III states that "Court personnel shall not solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the Court personnel

in performing official duties." In the present case, records reveal that the conduct of Florendo fell short of the standard required from Court personnel. The acts described in the complaint, the testimonies of the petitioners, and the documentary evidences presented clearly established that Florendo is guilty of grave misconduct and dishonesty, which this Court will not tolerate. The petitioners sufficiently established Florendo's guilt when they offered as evidence the piece of paper wherein Florendo acknowledged receiving ₱100,000.00 from them.

3. **ID.; ID.; ID.; ID.; ID.; FAILURE OF THE RESPONDENT-EMPLOYEE TO FILE COMMENT DEEMED IMPLIED ADMISSION OF THE CHARGES AGAINST HIM.—** [I]nstead of facing the charges against him, Florendo chose to ignore the accusations against him by no longer reporting for work. Indeed, for his failure to file comment, he is deemed to have impliedly admitted the charges against him.

4. **ID.; ID.; ID.; ID.; MISCONDUCT AND DISHONESTY ARE GRAVE OFFENSES THAT ARE PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.—** As to the penalty, under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, both gross misconduct and dishonesty are grave offenses that are punishable by dismissal even for the first offense. Section 52(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification for re-employment in the government service, and bar from taking civil service examination. Considering, however, that Florendo had already been dropped from the rolls in a Resolution dated April 23, 2014 in A.M. No. 14-4-108, the penalty of dismissal from service can no longer be imposed upon him. "Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon him."

5. **ID.; ID.; ID.; TO MAINTAIN THE PEOPLE'S RESPECT AND FAITH IN THE JUDICIARY, COURT EMPLOYEES SHOULD BE MODELS OF UPRIGHTNESS, FAIRNESS AND HONESTY, AND THEY SHOULD AVOID ANY ACT OR CONDUCT THAT WOULD DIMINISH PUBLIC TRUST AND CONFIDENCE IN THE COURTS.—** It must be emphasized that "all Court employees, being public servants in an office dispensing justice, must always act with a high

degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and Court regulations. To maintain the people's respect and faith in the judiciary, Court employees should be models of uprightness, fairness and honesty. They should avoid any act or conduct that would diminish public trust and confidence in the Courts."

D E C I S I O N

***PER CURIAM*:**

In a letter[1] dated February 19, 2013, Atty. Florencio C. Canlas, Agent-in-Charge of the National Bureau of Investigation (NBI)-Vigan District Office, Bantay, Ilocos Sur, transmitted to Executive Judge Cecilia Corazon S. Dulay-Archog, Regional Trial Court (RTC) of Vigan City, Ilocos Sur, for appropriate action, the administrative complaints of Leonor P. Alave (Alave) and Segundina Noces-De Leon (De Leon) (petitioners) against respondent Terencio G. Florendo (Florendo), Court Sheriff of RTC of Vigan City, Ilocos Sur, Branch 21, for Grave Misconduct and Dishonesty.

De Leon narrated in her Affidavit of Complaint[2] that sometime in the first week of April 2012, her daughter Elaine De Leon-De Los Santos (Elaine) arrived from Riyadh, Kingdom of Saudi Arabia, to work on the annulment of her marriage to her estranged husband Manuel Luis De Los Santos (Manuel). As such, De Leon asked her relative, Alave, who retired from the Metropolitan Trial Court of Vigan, to accompany her and Elaine to the house of Florendo who is widely known in their area to facilitate annulment cases.[3]

On April 4, 2012, the petitioners and Elaine went to Florendo's house and informed him of Elaine's desire to obtain an annulment

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[1] *Rollo*, p. 1.

[2] *Id.* at 13-15.

[3] *Id.* at 13.

of her marriage with Manuel. When Elaine asked for the cost of the suit, Florendo solicited the amount of ₱100,000.00 and assured them that he could cause the issuance of a favorable decision of annulment within four months and that a certain Atty. Marquez will handle the case. Immediately, they raised the money on the same date and gave it to Florendo.[4]

Sometime in November 2012, Alave received from Florendo a copy of the Decision[5] in Civil Case No. 1148-C supposedly issued on March 7, 2012 by Judge Gabino B. Balbin, Jr. of the RTC of Candon City, Ilocos Sur, Branch 23 and a Certificate of Finality[6] dated May 4, 2012 issued by Branch Clerk of Court Atty. Hilda Laroya Esquejo.[7]

The petitioners, however, found several errors in the contents of the decision. Alave narrated in her Sworn Statement[8] that the solemnizing officer stated in the decision was Judge Ante when the certificate of marriage clearly indicated that it was Judge Melanio C. Rojas (Judge Rojas) who solemnized the marriage. Also, the addresses of the petitioner and defendant in the decision were stated as Candon City and Vigan City, respectively, when both parties are from Vigan City, and the decision should have originated from a court in Vigan City.[9]

Immediately, the petitioners confronted Florendo about the errors in the documents and demanded their money back. Florendo, however, claimed that he delivered the decision and certificate of finality to the petitioners so that the latter could rectify whatever error it may contain. As such, Florendo crossed out the corrections and promised the petitioners that he will deliver the rectified version of the decision as soon as possible.[10]

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[4] *Id*. at 13-14.

[5] *Id*. at 36-39.

[6] *Id*. at 40.

[7] *Id*. at 58.

[8] *Id*. at 31-33.

[9] *Id*. at 32.

[10] *Id*.

Despite Florendo's promise, Alave insisted on the return of their money and sent a demand letter[11] dated November 27, 2012, which Florendo received as evidenced by the registry return card. But instead of returning the money, he sent to the petitioners a new decision and certificate of finality, albeit unsigned. Alave noticed that the errors had been corrected, but no longer trusting Florendo, she sought the advice of her former superior officer, retired Judge Rojas, who immediately advised the petitioners to send another demand letter and to seek the help of the NBI. Florendo received a second demand letter, but the petitioners disclosed that they could no longer trace his whereabouts because the latter had reportedly been suspended by this Court.[12]

On March 26, 2013, the Office of the Court Administrator (OCA) issued its 1st Indorsement[13] directing Florendo to file his comment thereon within ten (10) days from receipt of the Indorsement.

Due to Florendo's failure to submit his comment, the OCA issued a 1st Tracer,[14] wherein the OCA reiterated its order directing Florendo to file his comment on the charges against him. As such, he was given another five (5) days from receipt of the 1st Tracer to submit his comment. Despite repeated orders, however, Florendo failed to comply.

On May 12, 2015, the OCA recommended the re-docketing of the matter as a regular administrative case and that Florendo be found guilty of grave misconduct and dishonesty and that he be dismissed from service. Considering, however, that he has been dropped from the rolls effective March 1, 2013 for having been on absence without official leave, the OCA recommended that Florendo be imposed instead the accessory penalty of forfeiture of all benefits, except accrued leave credits, if any, and perpetual disqualification from re-employment in any

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[11] *Id*. at 35.

[12] *Id*. at 32-33, 58.

[13] *Id*. at 55.

[14] *Id*. at 56.

government instrumentality, including government-owned and controlled corporations.[15]

After a careful evaluation of the case, this Court finds the recommendation of the OCA to be proper under the circumstances.

In several occasions, this Court had emphasized the heavy burden and responsibility of Court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided.[16] Thus, this Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.[17]

Soliciting is prohibited under Section 2, Canon I of the Code of Conduct for Court Personnel which provides that "Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions," while Section 2(e), Canon III states that "Court personnel shall not solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the Court personnel in performing official duties."

In the present case, records reveal that the conduct of Florendo fell short of the standard required from Court personnel. The acts described in the complaint, the testimonies of the petitioners, and the documentary evidences presented clearly established that Florendo is guilty of grave misconduct and dishonesty, which this Court will not tolerate.

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[15] *Id*. at 57-61.

[16] *OCA v. Judge Necessario, et al.*, 707 Phil. 328, 346 (2013), citing *Obañaña, Jr. v. Judge Ricafort*, 473 Phil. 207, 214 (2004).

[17] *Re: Incident Report Relative to a Criminal Case Filed Against Rosemarie U. Garduce, Clerk III, Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Parañaque City*, A.M. No. P-15-3391, November 16, 2015.

The petitioners sufficiently established Florendo's guilt when they offered as evidence the piece of paper wherein Florendo acknowledged receiving ₱100,000.00 from them. Also, the Certification dated January 31, 2013 issued by the Branch Clerk of Court Maria Clarissa M. Galima-Singson, Office of the Clerk of Court of the RTC of Candon City, Ilocos Sur, showed that Civil Case No. 1148-C actually pertains to a Quieting of Title case decided by the RTC of Candon City, Ilocos Sur, Branch 71, and not to an annulment case. In fact, there is no record in said office of an annulment case involving Elaine and his estranged husband Manuel.[18]

Unfortunately, instead of facing the charges against him, Florendo chose to ignore the accusations against him by no longer reporting for work.

Indeed, for his failure to file comment, he is deemed to have impliedly admitted the charges against him.[19]

Moreover, records show that this is not the first offense committed by Florendo. On February 12, 2009, he was found guilty of dishonesty in A.M. No. P-07-2304 and fined by this Court.[20] He was likewise found guilty of dishonesty and corruption in A.M. No. P-12-3077 and was suspended for six (6) months per this Court's Decision dated July 4, 2012.[21]

As to the penalty, under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, both gross misconduct and dishonesty are grave offenses that are punishable by dismissal even for the first offense. Section 52(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification for re-employment in the government service, and bar from taking civil service examination.

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[18] *Rollo*, p. 59.

[19] *Agustin v. Mercado*, 555 Phil. 186, 194 (2007).

[20] *Mariñas v. Florendo*, 598 Phil. 322 (2009).

[21] *Rollo*, p. 58.

Considering, however, that Florendo had already been dropped from the rolls in a Resolution dated April 23, 2014 in A.M. No. 14-4-108,[22] the penalty of dismissal from service can no longer be imposed upon him. "Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon him."[23]

It must be emphasized that "all Court employees, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and Court regulations. To maintain the people's respect and faith in the judiciary, Court employees should be models of uprightness, fairness and honesty. They should avoid any act or conduct that would diminish public trust and confidence in the Courts."[24]

WHEREFORE, respondent Terencio G. Florendo is hereby found **GUILTY** of **GRAVE MISCONDUCT** and would have been **DISMISSED** from service, had he not been earlier dropped from the rolls. Accordingly, his retirement and other benefits, except accrued leave credits, are hereby **FORFEITED** and he is **PERPETUALLY DISQUALIFIED** from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on leave.

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[22] *Id*. at 59.

[23] *Lagado v. Leonido*, A.M. No. P-14-3222, August 12, 2014, 732 SCRA 579, 586.

[24] *Executive Judge Rojas, Jr. v. Mina*, 688 Phil. 241, 250-251 (2012).

EN BANC

[A.M. No. P-16-3419. February 23, 2016]
(Formerly OCA IPI No. 11-3648-P)

AUGUSTO V. SANTOS, *complainant, vs.* **SHERIFF IV ANTONIO V. LEAÑO, JR., SHERIFF III BENJIE E. LACSINA, SHERIFF III ALVIN S. PINEDA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COMPLAINANT'S WITHDRAWAL OF HIS COMPLAINT DOES NOT DISMISS THE ADMINISTRATIVE CASE AGAINST RESPONDENTS NOR DIVEST THE COURT OF ITS JURISDICTION TO DETERMINE THE ADMINISTRATIVE LIABILITIES OF ITS OFFICERS AND EMPLOYEES. —** Complainant's withdrawal of his Complaint does not dismiss the administrative case against respondents nor divest this court of its jurisdiction to determine the administrative liabilities of its officers and employees. To maintain the public's trust and confidence in government and its instrumentalities, disciplinary proceedings cannot be made to depend on the whim of complainants who may have lost interest in pursuing the case or succumbed to a settlement with the respondents. To do otherwise would undermine this court's authority under Article VIII, Section 6 of the Constitution. x x x. Thus, complainant's Motion and Manifestation does not prevent this court from continuing its investigation and taking proper action against respondents.
2. **ID.; ID.; ID.; ID.; RATIONALE.—** In *Saraza v. Tam*: At the outset, it must be emphasized that the withdrawal of an administrative complaint by the complainant does not necessarily warrant the dismissal of the same. Administrative actions cannot depend on the will or pleasure of a complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of a complainant in a matter relating to its disciplinary power. After all, complainants in administrative cases against court personnel are, in a real sense, only witnesses. The withdrawal of an

administrative complaint or subsequent desistance by the complainant does not free the respondent from liability, as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. It does not operate to divest the Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Courts disciplinary authority cannot be dependent on or frustrated by private arrangements between the parties. An administrative complaint against a court official or employee cannot simply be withdrawn by a complainant who suddenly changes his mind.

3. **ID.; ID.; ID.; SHERIFFS; SHERIFFS ARE HELD TO THE HIGHEST STANDARDS IN THE PERFORMANCE OF THEIR DUTIES, KEEPING IN MIND THAT "PUBLIC OFFICE IS A PUBLIC TRUST".—** "Sheriffs are officers of the court who serve and execute writs addressed to them by the court, who prepare and submit returns of their proceedings . . . [and] keep custody of attached properties." Proceedings for attachment are said to be "harsh, extraordinary and summary in nature— a rigorous remedy [that] exposes the debtor to humiliation and annoyance." Sheriffs are held to the highest standards in the performance of their duties, keeping in mind that "public office is a public trust."

4. **ID.; ID.; ID.; ID.; DUTIES.—** The duties of a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d) and Section 14 of the Rules of Court: x x x. The provisions mandate that upon the issuance of the writ of execution, the sheriff must demand that the person against whom the writ is directed must peaceably vacate the property within three (3) working days; otherwise, they will be forcibly removed from the premises. The sheriff must not destroy any improvements on the property unless ordered by the court. After the judgment has been satisfied in part or in full, the sheriff must make a return of the writ. If the writ cannot be satisfied in full within 30 days, the sheriff must report to the court the reason for its non- satisfaction. The sheriff must also make a report to the court every 30 days until the writ is fully satisfied and is rendered ineffective.

5. **ID.; ID.; ID.; ID.; LITIGANTS ARE NOT OBLIGED TO REQUEST THE SHERIFF TO EXECUTE THE WRIT OR**

TO "FOLLOW UP" A WRIT'S IMPLEMENTATION, AS THE SHERIFF'S DUTY IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL.— Considering the step-by-step process mandated by the Rules, the implementation of a writ of execution is a ministerial act of the sheriff. An act is ministerial if done by "an officer or tribunal [who] performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act done." Sheriffs do not exercise any discretion when implementing a writ of execution. Litigants are not obliged to request the sheriff to execute the writ: We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.

6. **ID.; ID.; ID.; ID.; A SHERIFF WHO IS PHYSICALLY UNABLE TO FULFILL HIS DUTIES DUE TO HIS ILL HEALTH, CANNOT DESIGNATE ANOTHER SHERIFF TO IMPLEMENT THE WRIT, BUT SHOULD INSTEAD INFORM THE COURT SO IT COULD MAKE OTHER ARRANGEMENTS FOR THE EXECUTION OF JUDGMENT, AND SHERIFFS WHO ACCEPTED THE DESIGNATION WITHOUT THE REQUISITE ORDER FROM THE COURT VIOLATE ADMINISTRATIVE CIRCULAR NO. 12.—** While Sheriff Ibarra was not impleaded in this case due to his death, his act of referring complainant to other sheriffs was irregular. If Sheriff Ibarra was physically unable to fulfill his duties due to his ill health, he should have informed the court so it could make other arrangements for the execution of judgment. Under Administrative Circular No. 12, sheriffs shall execute writs of their courts only within their territorial jurisdiction. If there is no deputy sheriff assigned or appointed to a court, only the judge may, at any time, designate any of the deputy sheriffs of the Office of the Clerk of Court to execute the writs. The judge may be allowed to designate

a deputy sheriff from another branch but must first secure the consent of the Presiding Judge. Respondent Leaño, Jr. was aware that his designation was irregular since he requested that complainant file a motion in court "to make [his] designation official." Both respondents Leaño, Jr. and Lacsina's acceptance of their designation without the requisite order from the court was in direct violation of Administrative Circular No. 12.

7. **ID.; ID.; ID.; ID.; A SHERIFF'S FAILURE TO IMPLEMENT A WRIT OF EXECUTION IS CHARACTERIZED AS GROSS NEGLECT OF DUTY, AND HIS FAILURE TO LIQUIDATE EXPENSES IS CONSIDERED SIMPLE MISCONDUCT, WHILE THE SOLICITATION OF SHERIFF'S EXPENSES WITHOUT OBSERVING THE PROPER PROCEDURE CONSTITUTES DISHONESTY OR EXTORTION; PROPER PENALTIES.—** A sheriff's failure to implement a writ of execution has previously been characterized by this court as gross neglect of duty. A sheriff's failure to liquidate expenses is considered simple misconduct, while the solicitation of sheriff's expenses without observing the proper procedure is considered dishonesty or extortion. [R]espondents blatantly violated Administrative Circular No. 12 when they agreed to execute a writ without the consent of the trial court. Under the Revised Rules on Administrative Cases in the Civil Service, dishonesty and gross neglect of duty is punishable by dismissal from service, while simple misconduct is punishable by suspension of one (1) month and (1) day to six (6) months for the first offense. This court has previously punished a sheriff with a fine of ₱10,000.00 for violating a circular of this court.

8. **ID.; ID.; ID.; ID.; COURT PERSONNEL WHO ARE SUBJECT TO ADMINISTRATIVE COMPLAINTS CANNOT JUST IGNORE DIRECTIVES FOR THEM TO COMMENT ON A COMPLAINT, FOR DOING SO ONLY SHOWS THEIR UTTER LACK OF RESPECT TO THE COURT AND THE INSTITUTION THEY REPRESENT. —** Respondents were given numerous opportunities by the Office of the Court Administrator to deny these allegations and interpose their defenses. However, they failed to file their comments on the Complaint despite being directed by the Office of the Court Administrator to do so. In *Martinez v. Zoleta:* [A] resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees

of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints. While the tracers of the Office of the Court Administrator are not resolutions of this court, the same principle applies to them. Court personnel who are subject to administrative complaints cannot just ignore directives for them to comment on a complaint. Doing so only shows their utter lack of respect for this court and the institution they represent.

9. **ID.; ID.; ID.; ID.; SHERIFFS MUST PERFORM THEIR DUTIES WITH THE UTMOST HONESTY AND DILIGENCE CONSIDERING THAT EVEN THE SLIGHTEST DEVIATION IN THE PRESCRIBED PROCEDURE MAY AFFECT THE RIGHTS AND INTERESTS OF THE LITIGANTS; PENALTY OF DISMISSAL FROM SERVICE, IMPOSED. —** Due to the nature of their duties, sheriffs are often in direct contact with litigants. As such, they must not exhibit conduct that may discredit the public's faith in the judiciary. They must perform their duties with the utmost honesty and diligence considering that even the slightest deviation in the prescribed procedure may affect the rights and interests of these litigants. Considering the numerous infractions committed by respondents, the proper penalty to be imposed upon them is dismissal from service. The judiciary is not obliged to keep dishonest, neglectful, and disobedient personnel within its ranks.

R E S O L U T I O N

***PER CURIAM*:**

In the dispensation of justice, sheriffs are considered the "grassroots of our judicial machinery"[1] since their duties and

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[1] *Tan v. Paredes*, 502 Phil. 305, 314 (2005) [*Per Curiam, En Banc*].

functions inevitably place them in close contact with litigants. The performance of their duties often shapes the public's perception of the judiciary. As such, sheriffs are expected to perform their duties honestly and efficiently. This court does not tolerate any misconduct that diminishes the image and integrity of the judiciary.

On April 15, 2011, Augusto V. Santos (Santos) filed a Verified Complaint-Affidavit[2] before the Office of the Court Administrator for Dereliction of Duty against respondents Sheriff IV Antonio V. Leaño, Jr., of the Office of the Clerk of Court of the Regional Trial Court of Tarlac City; Sheriff III Benjamin E. Lacsina of the Office of the Clerk of Court of Municipal Trial Court in Cities, Tarlac City; and Sheriff III Alvin S. Pineda of Branch 2 of the Municipal Trial Court in Cities, Tarlac City.[3]

In the Complaint-Affidavit, Santos alleged that he was the attorney-in-fact of the heirs of the late Lucio Gomez and that he filed on their behalf ejectment cases against various informal settlers occupying their lot in Barangay Binauganan, Tarlac City. The ejectment cases were filed before Branch 1 of the Municipal Trial Court of Tarlac City, and were docketed as Civil Case Nos. 9160 and 9162.[4]

After summary hearing, Santos obtained a favorable judgment. Pursuant to the finality of the trial court's Decision, a Writ of Execution was issued. The respondents in Civil Case Nos. 9160 and 9162 allegedly failed to vacate.[5]

Subsequently, Santos moved for the issuance of a special writ of demolition, which the trial court granted. The Special

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[2] *Rollo*, pp. 3-7.

[3] *Id*. at 2. The Complaint-Affidavit also impleads a private individual, Eddie Reyes. He is not included in this administrative matter since this court only has administrative supervision over its employees and officers.

[4] *Id*. at 3.

[5] *Id*. at 4.

Writ of Demolition ordered Branch Sheriff Danilo U. Ibarra (Sheriff Ibarra) to demolish the houses of the informal settlers.[6]

Santos alleged that he asked Sheriff Ibarra to implement the Special Writ of Demolition but the Sheriff was reluctant to perform it due to his physical condition.[7] Santos was allegedly referred instead to Benjie E. Lacsina (Sheriff Lacsina), Sheriff III of the Municipal Trial Court in Cities, Tarlac City Office of the Clerk of Court, and later to Antonio V. Leaño (Sheriff Leaño, Jr.), Sheriff IV of the Regional Trial Court of Tarlac.[8]

Santos alleged that Sheriff Lacsina and Sheriff Leaño, Jr. required him to deposit ₱200,000.00 to cover the sheriffs' expenses such as food and travel allowance and salaries of the demolition crew. He alleged that he deposited the amount with the trial court and the amount was withdrawn; however, no demolition occurred.[9]

Meanwhile, the respondents in Civil Case Nos. 9160 and 9162 were allegedly able to obtain a Writ of Preliminary Injunction before Branch 63 of the Municipal Trial Court. The cases, however, were affirmed on appeal before Branch 64 of the Regional Trial Court of Tarlac City. In view of Branch 64's Decision, Branch 63 lifted the Writ of Preliminary Injunction. The records were again remanded to Branch 1 of the Municipal Trial Court for execution. Santos alleged that he asked Sheriff Ibarra and Sheriff Lacsina to implement the Decision.[10]

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[6] *Id*.

[7] *Id*.

[8] *Id*. Santos initially filed a complaint before the Office of the Ombudsman but the complaint was referred to the Office of the Court Administrator. In the Complaint filed by Santos before the Office of the Ombudsman and attached as records to this case, Santos alleged that Sheriff Ibarra referred him to Regional Trial Court Sheriffs Antonio V. Leaño, Jr. *and Genaro U. Cajuguiran* (*Id*. at 36). According to Santos, both Sheriff Leaño, Jr. and Sheriff Cajuguiran required him to deposit ₱200,000.00 in order to execute the writ. Both received the amount but failed to execute the judgment (*Id*.). However, only Sheriff Leaño, Jr. was included in the Complaints before the Office of the Ombudsman and this court.

[9] *Id*.

[10] *Id*. at 4-5.

Santos alleged that Sheriff Ibarra and Sheriff Lacsina were reluctant to implement the Decision, with Sheriff Ibarra citing his illness and impending retirement and Sheriff Lacsina stating that some of the informal settlers were known to him as members of Iglesia ni Cristo, the same religious sect of which he was part. Santos was then referred again to Sheriff Leaño, Jr. for the implementation of the Decision.[11]

Sheriff Leaño, Jr. allegedly requested Santos to make his designation official. Santos' lawyer, Atty. Enrico Barin, filed a motion before the court. On June 22, 2010, the Municipal Trial Court issued the Order[12] designating Sheriff Leaño, Jr. and Sheriff Genaro U. Cajuguiran (Sheriff Cajuguiran) to assist Sheriff Ibarra. Santos alleged that there was an agreement among the sheriffs that Sheriff Leaño, Jr. was to prepare the Sheriff's Return and that Sheriff Lacsina and Sheriff Ibarra were going to sign it.[13]

Santos alleged that he met with Sheriff Leaño, Jr. at Max's Restaurant in Luisita Mall, Tarlac, where the latter provided him with an itemized list of expenditures. He alleged that Sheriff Leaño, Jr. required him to pay half of the expenses with the assurance that a demolition team would be assembled in time for the actual demolition.[14]

Santos allegedly paid Sheriff Leaño, Jr. the amount of ₱100,000.00 as partial payment.[15] He also allegedly paid ₱200,000.00 to Eddie Reyes, the person designated by Sheriff Leaño, Jr. to lead the demolition.[16] He further alleged that Sheriff Lacsina and Sheriff Alvin S. Pineda (Sheriff Pineda) of Branch 2 of the Municipal Trial Court of Tarlac City received, a day

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[11] *Id*. at 5.

[12] *Id*. at 25. The Order was issued on June 22, 2010 by Judge Marvin B. Mangino of Branch I of the Municipal Trial Court, Tarlac City.

[13] *Id*. at 5.

[14] *Id*.

[15] *Id*.

[16] *Id*.

before the supposed demolition, their per diems amounting to ₱11,000.00 "for them to show up at the site."[17]

He alleged that Sheriff Leaño, Jr. told him that the demolition would take place in February 2011 and that he requested ₱25,000.00 for the food and transportation of the demolition crew.[18]

Santos alleged that he paid all the amounts requested but the Writ of Demolition was not implemented. He alleged that Sheriff Leaño, Jr. again promised to implement the Writ two (2) weeks after the original promised date but did not follow through on this promise. Because of the failure of Sheriffs Leaño, Jr., Lacsina, and Pineda to implement the Writ, Santos alleged that he was constrained to file the Complaint-Affidavit.[19]

On June 6, 2011, respondents Sheriffs Leaño, Jr., Lacsina, and Pineda were ordered by the Office of the Court Administrator to comment on the Complaint-Affidavit.[20] Respondents Pineda and Lacsina requested an extension of ten (10) days to file their comment,[21] which the Office of the Court Administrator granted.[22] However, respondents failed to file the required comment despite receipt of notice.[23]

In the Manifestation and Motion[24] dated February 19, 2014, complainant informed this court that he was withdrawing his case against respondents on the ground that his filing of the Complaint-Affidavit was caused by a "mere misunderstanding and/or lack of proper reconciliation of records"[25] during the accounting of expenditures in the demolition.

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[17] *Id*. at 38.

[18] *Id*. at 6.

[19] *Id*.

[20] *Id*. at 385.

[21] *Id*. at 388.

[22] *Id*. at 389-390.

[23] *Id*. at 391-392.

[24] *Id*. at 401.

[25] *Id*.

In its report[26] dated March 30, 2015, the Court Administrator found that respondents' failure to comply with what was purely a ministerial duty constituted gross neglect and gross inefficiency in the performance of official duties.[27] While the estimated expenses for the demolition were approved by the trial court, respondents failed to itemize and liquidate the expenses for the demolition and to issue an official receipt upon receiving complainant's money.[28] This amounted to dishonesty or extortion.[29] Moreover, respondents' refusal to comply with the orders to comment on the Complaint-Affidavit despite notice constituted disrespect not only to the Office of the Court Administrator but also to this court.[30] For these infractions, the Office of the Court Administrator recommended that respondents be dismissed from service.[31]

The findings of fact and recommendations of the Office of the Court Administrator are adopted.

Complainant's withdrawal of his Complaint does not dismiss the administrative case against respondents nor divest this court of its jurisdiction to determine the administrative liabilities of its officers and employees.[32] To maintain the public's trust and confidence in government and its instrumentalities, disciplinary proceedings cannot be made to depend on the whim of complainants who may have lost interest in pursuing the case or succumbed to a settlement with

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[26] *Id*. at 394-400, Administrative Matter for Agenda. The report was written by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[27] *Rollo*, p. 397.

[28] *Id*. at 398.

[29] *Id*. at 399.

[30] *Id*. at 396.

[31] *Id*. at 399.

[32] See *Escalona v. Padillo*, 645 Phil. 263 (2010) [*Per Curiam, En Banc*]; *Dagsa-an v. Conag*, 352 Phil. 619 (1998) [Per *J.* Vitug, First Division]; and *Lapeña v. Pamarang*, 382 Phil. 325 (2000) [Per *J.* Mendoza, Second Division].

the respondents.[33] To do otherwise would undermine this court's authority under Article VIII, Section 6 of the Constitution.[34] In *Saraza v. Tam*:[35]

> At the outset, it must be emphasized that the withdrawal of an administrative complaint by the complainant does not necessarily warrant the dismissal of the same. Administrative actions cannot depend on the will or pleasure of a complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of a complainant in a matter relating to its disciplinary power. After all, complainants in administrative cases against court personnel are, in a real sense, only witnesses.
>
> The withdrawal of an administrative complaint or subsequent desistance by the complainant does not free the respondent from liability, as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. It does not operate to divest the Court of jurisdiction to determine the truth behind the matter stated in the complaint. The Courts disciplinary authority cannot be dependent on or frustrated by private arrangements between the parties. An administrative complaint against a court official or employee cannot simply be withdrawn by a complainant who suddenly changes his mind.[36]

Thus, complainant's Motion and Manifestation does not prevent this court from continuing its investigation and taking proper action against respondents.

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[33] See *Sy v. Academia*, 275 Phil. 775 (1991) [*Per Curiam, En Banc*]; *Escalona v. Padillo*, 645 Phil. 263 (2010) [*Per Curiam, En Banc*]; and *Saraza v. Tam*, 489 Phil. 52 (2005) [Per *J*. Ynares-Santiago, First Division].

[34] CONST., Art. VIII, Sec. 6 provides:

SECTION 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[35] 489 Phil. 52 (2005) [Per *J.* Ynares-Santiago, First Division].

[36] *Id*. at 55, *citing Armando R. Canillas v. Corazon V. Pelayo*, 435 Phil. 13, 16 (2002); *Lapeña v. Pamarang*, 382 Phil. 325 (2000); *Enojas, Jr. v. Gacott, Jr.*, 379 Phil. 27 (2000); *Balajadia v. Gatchalian*, 484 Phil. 27 (2004); *Atty. Virgilia C. Carman v. Judge Alexis A. Zerrudo*, 466 Phil. 569 (2004) [Per *J*. Puno, Second Division]; and *Office of the Court Administrator v. Morante*, 471 Phil. 837 (2004) [*Per Curiam, En Banc*].

"Sheriffs are officers of the court who serve and execute writs addressed to them by the court, who prepare and submit returns of their proceedings . . . [and] keep custody of attached properties."[37] Proceedings for attachment are said to be "harsh, extraordinary and summary in nature— a rigorous remedy [that] exposes the debtor to humiliation and annoyance."[38] Sheriffs are held to the highest standards in the performance of their duties, keeping in mind that "public office is a public trust."[39]

The duties of a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d) and Section 14 of the Rules of Court:

SEC 10. *Execution of judgments for specific act*. –

. . . .

(c) Delivery or restitution of real property. The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust and such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

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[37] *Villanueva-Fabella v. Judge Lee*, 464 Phil. 548, 567 (2004) [Per *J.* Panganiban, First Division], citing the 2002 Revised Manual for Clerks of Court, Vol. 1, Chap. VI and VII.

[38] *Id*. at 568, citing *Lirio v. Ramos,* 331 Phil. 378 (1996) [Per *J*. Davide, Jr., Third Division].

[39] CONST., Art. XI, Sec. 1 provides:

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

(d) Removal of improvements on property subject of execution. When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

. . . .

SEC. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The provisions mandate that upon the issuance of the writ of execution, the sheriff must demand that the person against whom the writ is directed must peaceably vacate the property within three (3) working days; otherwise, they will be forcibly removed from the premises. The sheriff must not destroy any improvements on the property unless ordered by the court. After the judgment has been satisfied in part or in full, the sheriff must make a return of the writ. If the writ cannot be satisfied in full within 30 days, the sheriff must report to the court the reason for its non- satisfaction. The sheriff must also make a report to the court every 30 days until the writ is fully satisfied and is rendered ineffective.

Considering the step-by-step process mandated by the Rules, the implementation of a writ of execution is a ministerial act of the sheriff. An act is ministerial if done by "an officer or tribunal [who] performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment, upon the propriety or impropriety of the act

done."[40] Sheriffs do not exercise any discretion when implementing a writ of execution. Litigants are not obliged to request the sheriff to execute the writ:

> We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. There is even no need for the litigants to "follow up" a writ's implementation.[41]

The Writ of Execution in this case was issued by Branch 1 of the Municipal Trial Court of Tarlac City on February 23, 2009.[42] A Special Writ of Demolition was issued on July 15, 2009.[43] Complainant first approached Sheriff Ibarra of the Municipal Trial Court to request the implementation of the Writ. Due to health reasons, Sheriff Ibarra referred him to respondent Lacsina of the Municipal Trial Court Office of the Clerk of Court, and later, to respondent Leaño, Jr. of the Regional Trial Court.

While Sheriff Ibarra was not impleaded in this case due to his death, his act of referring complainant to other sheriffs was irregular. If Sheriff Ibarra was physically unable to fulfill his duties due to his ill health, he should have informed the court so it could make other arrangements for the execution of judgment.

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[40] *Office of the Court Administrator v. Tolosa* (formerly A.M. OCA I.P.I. No. 02-1383-RTJ), 667 Phil. 9, 16-17 (2011) [Per *J.* Brion, Third Division], *citing Cobarrubias v. Apostol,* 516 Phil. 377 (2006) [Per *J.* Carpio, Third Division].

[41] *Anico v. Pilipia* (Formerly OCA I.P.I. No. 08-2977-P), 670 Phil. 460, 470 (2011) [*Per Curiam, En Ban*c], *citing Judge Calo v. Dizon*, 583 Phil. 510 (2008) [Per *J.* Chico-Nazario, Third Division].

[42] *Rollo*, pp. 18-19.

[43] *Id*. at 20-21.

Under Administrative Circular No. 12, sheriffs shall execute writs of their courts only within their territorial jurisdiction.[44] If there is no deputy sheriff assigned or appointed to a court, only the judge may, at any time, designate any of the deputy sheriffs of the Office of the Clerk of Court to execute the writs.[45] The judge may be allowed to designate a deputy sheriff from another branch but must first secure the consent of the Presiding Judge.[46]

Respondent Leaño, Jr. was aware that his designation was irregular since he requested that complainant file a motion in court "to make [his] designation official."[47] Both respondents Leaño, Jr. and Lacsina's acceptance of their designation without the requisite order from the court was in direct violation of Administrative Circular No. 12.

What is worse is that through their illegal designation, respondents were able to commit more infractions. Respondent Lacsina, on his part, made it appear to complainant that he

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[44] Supreme Court Adm. Circ. No. 12, item 2 provides:

2. All Clerks of Court of the Metropolitan Trial Court and Municipal Trial Courts in Cities, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts within their territorial jurisdiction[.]

[45] Supreme Court Adm. Circ. No. 12, item 3 provides:

3. The judge of the Regional Trial Court, Metropolitan Trial Court, and the Municipal Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the Presiding Judge thereof[.]

[46] Supreme Court Adm. Circ. No. 12, item 3 provides:

3. The judge of the Regional Trial Court, Metropolitan Trial Court, and the Municipal Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the Presiding Judge thereof[.]

[47] *Rollo*, p. 5.

could validly execute the Special Writ of Demolition but refused to do so because of his religious affiliations. Respondent Leaño, Jr., on the other hand, accepted the designation with the knowledge that it was illegal, and then proceeded to ask complainant to deposit ₱200,000.00,[48] the amount approved by the court as the estimates of expenses.

It was only on June 22, 2010 that Judge Marvin B. Mangino of the Municipal Trial Court ordered respondent Leaño, Jr. and Sheriff Cajuguiran to assist Sheriff Ibarra in implementing the Special Writ of Demolition.[49] Upon his official designation, respondent Leaño, Jr. met with complainant and handed him a handwritten list of itemized expenses:

LIST OF EXPECTED EXPENDITURES AS REQUESTED BY SHERIFF DONG LEAÑO:

PER DIEM OF PNP OFFICIALS - (PROVINCIAL & CITY OFFICIALS)	47,000
PER DIEM SHERRIF [sic] BENJE LACSINA	10,000-
SHERRIF [sic] JEN CAUGIRAN [sic]	10,000-
SHERRIF [sic] DONG LEAÑO	10,000-
PER DIEM OF LOCAL OFFICIALS BINAUGANAN & MALIWALO	20,000-
FOOD & TRANSPORTATION	20,000-
DEMOLITION CREW SALARIES FOR 100 PERSONS	50,000-
TEAM LEADER DEMOLITION CREW	10,000-
POLICE COMPONENT FOR 20 OFFICERS & MEN	20,000-
	₱197,000-[50]

Complainant alleged that respondent Leaño, Jr. told him to pay half of the approved amount to ensure that the demolition team would be assembled on time.[51] Complainant allegedly paid

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[48] *Id*. at 22.

[49] *Id*. at 25.

[50] *Id*. at 26.

[51] *Id*. at 5.

half of the amount requested and another ₱100,000.00 to Eddie T. Reyes, a private individual allegedly assigned to lead the demolition crew.[52] Respondents Lacsina and Pineda (of Branch 2 of the Municipal Trial Court of Tarlac City) were paid per diems "for them to show up at the site."[53] According to acknowledgement receipts presented by complainant, respondent Lacsina received ₱8,000.00[54] while respondent Pineda received ₱3,000.00.[55] On a separate occasion, respondent Leaño, Jr. again asked complainant for ₱25,000 for expenses, itemized as follows:

3/14/2011

1. 5 [illegible] Vehicles = 2500/each –	2,500.00
2. Food for 100 personnel including snacks –	15,000.00
3. Food for Policemen 50 personnel –	5,000.00
	22,500.00
	+ 2,500.00
EXPENSES–	₱25,000.00
	received

[signed]
3/14/2011
JOLIBEE [sic] 1:00 PM[56]

Under Rule 141, Section 10 of the Rules of Court, expenses for the execution of writs shall be paid by the interested party based on estimates by the sheriff and subject to the approval of the court. Upon approval of the estimates, the party must deposit the amount with the clerk of court who shall disburse it to the sheriff. The sheriff must liquidate the amount within the same period of filing the return before the court. Sections 9 and 10 state:

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[52] *Id*. at 93.

[53] *Id*. at 38.

[54] *Id*. at 27-28.

[55] *Id*. at 27.

[56] *Id*. at 30.

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes*. –

. . . .

In addition to the fees hereinabove fixed, the amount of ONE THOUSAND (₱1,000.00) PESOS shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court- authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of ONE THOUSAND (₱1,000.00) PESOS is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

In case a request to serve the summons and other process is made to the Clerk of Court and *Ex-officio* sheriff who has jurisdiction over the place where the defendant or the person subject of the process resides, a reasonable amount shall be withdrawn from said deposit by the Clerk of the Court issuing the process for the purchase of a postal money order to cover the actual expenses of the serving sheriff.

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

On June 11, 2010, the Municipal Trial Court approved Sheriff Ibarra's estimated expenses amounting to ₱200,000.00.[57] This amount was supposed to be deposited to the clerk of court who should then disburse it to Sheriff Ibarra, respondent Leaño, Jr. and Sheriff Cajuguiran, the sheriffs assigned to execute the Writ.

Instead of following proper procedure, respondent Leaño, Jr. directly solicited and received money for expenses from the complainant. Respondents Lacsina and Sheriff Pineda both received per diems from the complainant even though they were not the sheriffs assigned by the court. The sheriffs never gave complainant an official receipt for the amounts received; on the contrary, acknowledgments of the amounts received were merely written on various scraps of paper. The amounts received were also not liquidated. Further, the Special Writ of Demolition was not fully served and implemented.

A sheriff's failure to implement a writ of execution has previously been characterized by this court as gross neglect of duty.[58] A sheriff's failure to liquidate expenses is considered simple misconduct,[59] while the solicitation of sheriff's expenses without observing the proper procedure is considered dishonesty or extortion.[60] As earlier mentioned, respondents blatantly violated Administrative Circular No. 12 when they agreed to execute a writ without the consent of the trial court.

Under the Revised Rules on Administrative Cases in the Civil Service, dishonesty and gross neglect of duty is punishable by dismissal from service, while simple misconduct is punishable by suspension of one (1) month and (1) day to six (6) months for the first offense. This court has previously punished a

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[57] *Id*. at 22.

[58] See *Anico v. Pilipiña* (formerly OCA I.P.I. No. 08-2977-P), 670 Phil. 460 (2011) [*Per Curiam, En Banc*].

[59] See *Garcia v. Montejar* (formerly A.M. OCA I.P.I. No. 06-2392-P), 648 Phil. 231 (2010) [Per *J.* Brion, Third Division].

[60] See *Anico v. Pilipiña* (formerly OCA I.P.I. No. 08-2977-P), 670 Phil. 460 (2011) [*Per Curiam, En Banc*]

sheriff with a fine of ₱10,000.00 for violating a circular of this court.[61]

Respondents were given numerous opportunities by the Office of the Court Administrator to deny these allegations and interpose their defenses. However, they failed to file their comments on the Complaint despite being directed by the Office of the Court Administrator to do so.[62] In *Martinez v. Zoleta*:[63]

> [A] resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. *Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints*.[64] (Emphasis supplied)

While the tracers of the Office of the Court Administrator are not resolutions of this court, the same principle applies to them. Court personnel who are subject to administrative complaints cannot just ignore directives for them to comment on a complaint. Doing so only shows their utter lack of respect for this court and the institution they represent.

Due to the nature of their duties, sheriffs are often in direct contact with litigants. As such, they must not exhibit conduct that may discredit the public's faith in the judiciary. They must perform their duties with the utmost honesty and diligence considering that even the slightest deviation in the prescribed procedure may affect the rights and interests of these litigants.

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[61] See *Romero v. Sison* (formerly OCA IPI No. 99-667-P), 533 Phil. 312 (2006) [Per *J.* Garcia, Second Division].

[62] See *rollo*, pp. 391-392, OCA Tracers.

[63] 374 Phil. 35 (1999) [*Per Curiam, En Banc*].

[64] *Id*. at 47, citing *Josep vs. Abarquez*, 330 Phil. 352 (1996) [Per *J.* Padilla, First Division].

Considering the numerous infractions committed by respondents, the proper penalty to be imposed upon them is dismissal from service. The judiciary is not obliged to keep dishonest, neglectful, and disobedient personnel within its ranks.

WHEREFORE, respondents Sheriff IV Antonio V. Leaño, Jr. of the Office of the Clerk of Court of the Regional Trial Court of Tarlac City, Sheriff III Benjamin E. Lacsina of the Office of the Clerk of Court of the Municipal Trial Court in Cities, Tarlac City, and Sheriff III Alvin S. Pineda of Branch 2 of the Municipal Trial Court in Cities, Tarlac City, are hereby **DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except for accrued leave credits, if any, with prejudice to re- employment in any branch or instrumentality of government, including government-owned or controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on leave.

EN BANC

[IPI No. 14-222-CA-J. February 23, 2016]

RE: COMPLAINT OF ATTY. MARIANO R. PEFIANCO AGAINST JUSTICES MARIA ELISA SEMPIO DIY, RAMON PAUL L. HERNANDO, AND CARMELITA SALANDANAN-MANAHAN, OF THE COURT OF APPEALS CEBU.

SYLLABUS

1. **LEGAL ETHICS; JUSTICES AND JUDGES; ADMINISTRATIVE CHARGE OF PARTIALITY; THE COMPLAINANT CARRIES THE BURDEN OF PROOF TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE CONDUCT OF THE JUDGES OR THE JUSTICES IS CLEARLY INDICATIVE OF ARBITRARINESS AND PREJUDICE BEFORE THE QUESTIONED CONDUCT COULD BE STIGMATIZED AS BIASED AND PARTIAL.—** The complainant's main allegation in his administrative complaint is **partiality** on the part of the respondent-Justices who dismissed outright the petition for review which he filed in behalf of the petitioners in CA G.R. CEB SP No. 06984. The complainant accuses the respondent-Justices of favoring the other party to the case by dismissing the petition based purely on technicalities, without consideration of the prayer stated in the petition. Bare allegations, however, will not suffice to sustain a claim of [partiality]. The complainant carries the burden of proof to show that the conduct of the judge, or the respondent-Justices in this case, was clearly indicative of arbitrariness and prejudice before the questioned conduct could be stigmatized as biased and partial. **The evidence of bias or prejudice must be clear and convincing**.

2. **ID.; ID.; ID.; EXTRA-JUDICIAL SOURCE RULE; IN ORDER FOR A CLAIM OF PARTIALITY TO BE UPHELD AGAINST THE JUDGES OR JUSTICES, THE RESULTING ORDER, RESOLUTION, OR DECISION THEREOF MUST HAVE BEEN RENDERED BASED ON AN "EXTRAJUDICIAL SOURCE". —** [I]t is also important that the resulting order, resolution, or decision must have been rendered based on an "extrajudicial source" in order for a claim of partiality to be upheld against the judge or justices who issued the order, resolution, or decision. This rule is known in the United States as the **Extra-Judicial Source Rule**, which was enunciated in the case of *Carter v. Stat*. In that case, the Supreme Court of the State of Georgia held that "in order to be disqualifying, the alleged bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."

3. **ID.; ID.; ID.; ID.; AS LONG AS DECISIONS MADE AND OPINIONS FORMED IN THE COURSE OF JUDICIAL PROCEEDINGS ARE BASED ON THE EVIDENCE PRESENTED, THE CONDUCT OBSERVED BY THE MAGISTRATE, AND THE APPLICATION OF THE LAW, SUCH OPINIONS – EVEN IF LATER FOUND TO BE ERRONEOUS – WILL NOT SUSTAIN A CLAIM OF PERSONAL BIAS OR PREJUDICE ON THE PART OF THE JUDGE.—** In this jurisdiction, we held in *Gochan v. Gochan* that as long as decisions made and opinions formed in the course of judicial proceedings are based on the evidence presented, the conduct observed by the magistrate, and the application of the law, such opinions – even if later found to be erroneous – will not sustain a claim of personal bias or prejudice on the part of the judge. In the present case, other than the complainant's accusation, we find nothing in the administrative complaint and in the records to sufficiently convince us that the respondent-Justices were partial in issuing their dismissal resolution dated January 17, 2013. x x x. [T]he dismissal of the petition for review filed by the complainant (as counsel of the petitioners in CA G.R. CEB SP No. 06984) is supported by applicable jurisprudence and provisions of the Rules of Court, and not from an extrajudicial source. The complainant's allegation of partiality against the respondent-Justices is plainly unfounded.

4. **ID.; ATTORNEYS; SUSPENSION; THE LIFTING OF SUSPENSION FROM THE PRACTICE OF LAW IS NOT AUTOMATIC UPON THE END OF THE PERIOD STATED IN THE DECISION, AS AN ORDER FROM THE COURT LIFTING THE SUSPENSION IS NECESSARY TO ENABLE THE SUSPENDED LAWYER TO RESUME HIS OR HER LEGAL PRACTICE.—** Indeed, this Court, in a resolution dated August 1, 2012, in Administrative Case No. 6116, suspended the complainant for one (1) year from the practice of law for violation of the Lawyer's Oath, and Rule 1.01 Canon 1 and Rule 9.02 Canon 9 of the Code of Professional Responsibility. Unless his suspension has been lifted by this Court, the complainant remains to be suspended and is prohibited from engaging in the practice of law. We have held that the lifting of suspension from the practice of law is not automatic upon the end of the period stated in the decision; an order from the Court lifting the suspension is

necessary to enable the suspended lawyer to resume his or her legal practice.

5. **ID.; JUSTICES AND JUDGES; ADMINISTRATIVE CHARGES AGAINST RESPONDENT-JUSTICES, DISMISSED. —** As to the other charges against the respondent-Justices, *i.e.,* gross incompetence, gross ignorance of the law, gross misconduct, evident bad faith, and gross inexcusable negligence, we find these charges to be similarly unfounded as the complainant, who carries the burden of proof, has miserably failed to substantiate his allegations with clear and convincing evidence. We likewise dismiss the charge of violation of Sec. 3(e) of R.A. No. 3019 for being criminal in nature; thus, it is not the proper subject of an administrative case.

D E C I S I O N

BRION, *J.*:

For this Court's resolution is the letter-complaint[1] dated February 20, 2014, filed by Atty. Mariano R. Pefianco (*complainant*) seeking the suspension from office of Associate Justices Maria Elisa Sempio Diy, Carmelita Salandanan-Manahan, and Ramon Paul L. Hernando (*respondent- Justices*) of the Court of Appeals, Cebu City Station, for alleged violations of Canon 3 of the New Code of Judicial Conduct on impartiality, and Sec. 3(e) of Republic Act No. 3019[2] on causing undue injury or giving unwarranted benefits, advantage, or preference to a private party, in the discharge of judicial functions, through manifest partiality, evident bad faith, or gross inexcusable negligence.

In a memorandum[3] dated April 1, 2014, Court Administrator Jose Midas P. Marquez forwarded the letter-complaint to the

[1] *Rollo,* pp. 4-9.

The complainant filed the same letter-complaint with the Office of the Secretary of the Department of Justice, which referred the same to the Office of the Court Administrator in a 1st Indorsement dated May 12, 2014; *id.* at 3.

[2] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[3] *Rollo,* p. 1.

Office of the Chief Justice for appropriate action. The case was docketed as IPI No. 14-222-CA-J.

The complainant, who is the counsel for the petitioners in CA G.R. CEB SP No. 06984,[4] claimed that the respondent-Justices, through their January 17, 2003 resolution in the same case, appeared to be "trying hard to find faults on the petition for review to justify its dismissal favorable to respondents x x x without reading the prayer of the said petition."[5] The complainant's prayer was for the CA to "gives (*sic*) due course to the PETITION and that an order issue directing the respondent secretary (*of the DENR*) to certify the record of DENR CASE No. 8859 to this Honorable Court (*referring to the CA*) in order to have the annexes of this petition authenticated and thereafter for review."[6]

In the assailed resolution dated January 17, 2013, in CA G.R. CEB SP No. 06984, the respondent-Justices, who are members of the CA Twentieth (20th) Division, dismissed outright the petition for review filed by the complainant on the following grounds:

a. The assailed decision of the DENR which is attached to the petition for review is not a duplicate original or certified true copy thereof.

b. The assailed resolution dated June 6, 2012, denying petitioner's motion for reconsideration of the decision of the DENR was not attached to said petition.

c. Counsel for petitioners, herein complainant Atty. Pefianco, has no Special Power of Attorney to sign the Verification and Certification of Non-Forum Shopping in behalf of petitioners.

d. The notarial certificate also failed to state the office address of the notary public in violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice.[7]

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[4] Entitled *Domingo del Rosario, et al. v. Pagtanac, et al.*

[5] *Rollo,* p. 7.

[6] *Ibid.*

[7] *Rollo,* p. 71.

We required the respondent-Justices to file their comments on the complaint in a resolution[8] dated June 10, 2014.

In compliance with our June 10, 2014 resolution, Justices Sempio Diy and Salandanan-Manahan filed a Joint Comment[9] dated October 10, 2014. Justice Hernando separately filed his Comment[10] dated November 14, 2014.

Comments to the administrative complaint

Justices Sempio Diy and Salandanan-Manahan maintain that the outright dismissal of the complainant's clients' petition for review (in CA G.R. CEB SP No. 06984), due to the above-mentioned procedural infirmities, is warranted and supported by the Rules of Court and by jurisprudence. They specifically point to Section 7 of Rule 43 of the 1997 Rules of Civil Procedure that states:

SEC. 7. *Effect of failure to comply with requirements*. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

And while the application of procedural rules may be relaxed by the court, they contend that the court's grant of leniency must be anchored on the existence of persuasive and meritorious grounds; that the party invoking liberality must at least provide a reason for its noncompliance; and that, in this case, the complainant gave no reason to justify the failure to comply with the requirements in the proper filing of a petition for review.

Further, they allege that the charges against them for violations of Canon 3 of the New Code of Judicial Conduct, and Sec. 3(e) of R.A. No. 3019 are utterly baseless and unwarranted; that, in dismissing the petition for review of the complainant's clients,

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[8] *Id.* at 51.

[9] *Id.* at 69-77.

[10] *Id.* at 93-96.

"gross incompetence, gross ignorance of the law or gross misconduct" or "manifest partiality, evident bad faith or gross inexcusable negligence" cannot be imputed against them; a judge or justice can only be held administratively liable if it can be shown that he or she committed an error so gross and patent as to produce an inference of bad faith. They maintain that their January 17, 2003 resolution is supported by legal, procedural, and jurisprudential bases, and that no bad faith or malice should be inferred from their dismissal of the subject petition for review merely because their resolution is adverse to the complainant's clients.

Also, Justices Sempio Diy and Salandanan-Manahan argue that a judicial remedy is still available to the complainant's clients from the dismissal of their petition for review; that the filing of the present administrative complaint is not an alternative, neither complementary nor supplementary, to the judicial remedies provided by law.

In a separate comment filed, *Justice Hernando* contends that the present administrative complaint is baseless and vexatious and must be dismissed outright because the remedy for the complainant's case is judicial, not administrative, in nature; that the filing of an administrative complaint against a judge or justice is not an appropriate remedy where judicial recourse is available.

Also, he argues that the complainant has no authority to file the present administrative complaint, as he appears to be without any special power of attorney from his clients for such purpose; and that the complainant's lack of authority reflects upon his utter ignorance of the rules on representative parties and of the substantive law on Agency.

The respondent-Justices mentioned in their comments that the complainant had been suspended by this Court for one (1) year in a resolution dated August 12, 2012, in Administrative Case (*A.C.*) No. 6116;[11] thus, they contend that, at the time he

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[11] Entitled *Engr. Tumbokon v. Atty. Mariano R. Pefianco.*

filed (on February 7, 2013) the motion for reconsideration to the CA's dismissal resolution, the complainant was without authority to practice law and to represent his clients by reason of his suspension.

OUR RULING

We **DISMISS** the present administrative complaint filed against Associate Justices Maria Elisa Sempio Diy, Carmelita Salandanan-Manahan, and Ramon Paul L. Hernando of the Court of Appeals, Cebu City Station, **for being devoid of legal and factual merit**.

The complainant's main allegation in his administrative complaint is **partiality** on the part of the respondent-Justices who dismissed outright the petition for review which he filed in behalf of the petitioners in CA G.R. CEB SP No. 06984. The complainant accuses the respondent-Justices of favoring the other party to the case by dismissing the petition based purely on technicalities, without consideration of the prayer stated in the petition.

Bare allegations, however, will not suffice to sustain a claim of impartiality. The complainant carries the burden of proof to show that the conduct of the judge, or the respondent-Justices in this case, was clearly indicative of arbitrariness and prejudice before the questioned conduct could be stigmatized as biased and partial. **The evidence of bias or prejudice must be clear and convincing**.[12]

Moreover, it is also important that the resulting order, resolution, or decision must have been rendered based on an "extrajudicial source" in order for a claim of partiality to be upheld against the judge or justices who issued the order, resolution, or decision. This rule is known in the United States as the **Extra-Judicial Source Rule**,[13] which was enunciated in

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[12] *Reyes v. CA,* August 28, 2001, 363 SCRA 725; *Alicia E. Asturias v. Attys. Manuel Serrano and Emiliano Samson*, 512 Phil. 496 (2005).

[13] 271 S.E.2d 475 (Ga. 1980) quoting *U.S. v. Grinnell Corp.*, 384 U.S. 563 (1966).

the case of *Carter v. State.*[14] In that case, the Supreme Court of the State of Georgia held that "in order to be disqualifying, the alleged bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."

In this jurisdiction, we held in *Gochan v. Gochan*[15] that as long as decisions made and opinions formed in the course of judicial proceedings are based on the evidence presented, the conduct observed by the magistrate, and the application of the law, such opinions – even if later found to be erroneous – will not sustain a claim of personal bias or prejudice on the part of the judge.[16]

In the present case, other than the complainant's accusation, we find nothing in the administrative complaint and in the records to sufficiently convince us that the respondent-Justices were partial in issuing their dismissal resolution dated January 17, 2013.

Though no copy of the assailed January 17, 2013 resolution is contained in the records, the reasons for the dismissal (of the subject petition for review) were sufficiently discussed and reiterated in the December 11, 2013 resolution issued by the same respondent-Justices in CA G.R. CEB SP No. 06984. A copy of the December 11, 2013 resolution, which denied with finality the motion for reconsideration (to the dismissal resolution) filed by the complainant, is attached to the Joint Comment submitted to this Court by Justices Sempio Diy and Salandanan-Manahan. We quote herein the pertinent paragraphs of the December 11, 2013 resolution:

> In the subject January 17, 2013 resolution, this Court dismissed the petition for certiorari (*sic*) filed by the petitioners for the following infirmities:

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[14] *Ibid.*

[15] 446 Phil. 433 (2003), citing *Viewmaster Construction Corp v. Roxas,* July 13, 2000, 335 SCRA 540.

[16] *Id.* at 450.

1. The assailed decision of the DENR attached to the petition for certiorari (*sic*) is not a duplicate original or certified true copy thereof.

2. The alleged resolution dated June 6, 2012, denying petitioners' motion for reconsideration of the decision of the DENR was not attached to the petition for certiorari (*sic*).

3. Counsel for petitioners, Atty. Mariano Pefianco, has no Special Power of Attorney to sign the Verification and Certification of Non-Forum Shopping in behalf of petitioners.

4. The notarial certificate also failed to state the office address of the notary public in violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice.

x x x x x x x x x

At the outset, this Court manifests that it takes strong exception to petitioners' vitriolic allegation that this Court is "trying hard to find faults on [in] the petition for review to justify its dismissal favourable to respondents herein." It is stressed that the Rules mandate the dismissal of an infirmed petition. It is clearly not finding fault[s] when the procedural infirmities are clearly patent and glaring.

Likewise, contrary to what petitioners would want to impress, We did not deliberately overlook petitioners' prayer that the Secretary of the Department of Natural Resources be ordered "to certify the record of DENR CASE No. 8859 to this Honorable Court in order to have the annexes of this petition authenticated." True, this Court has the power to require the court *a quo* or a quasi-judicial agency to elevate the original records of the case pursuant to Section 6(1), Rule VI of the 2009 Internal Rules of the Court of Appeals. This authority, however, rests within the sole discretion of this Court. The proviso does not serve as a source of right or authority for any of the parties or litigants to order the Court to elevate the records of the case from which the case originated. The duty to comply and to ensure that the Rules are strictly observed still falls upon petitioners. It behooves upon all the parties seeking relief from this Court to ensure that their petition does not suffer from any fatal procedural infirmity.

It cannot be gainsaid that this Court was justified in dismissing the petition. Section 7, Rule 43 of the 1997 Rules of Civil Procedure is unequivocal:

> SEC. 7. *Effect of failure to comply with requirements*. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Indeed, the Rules of procedure may be relaxed but the grant of such leniency has always been anchored on the existence of persuasive and meritorious ground. Furthermore, jurisprudence teaches that concomitant to a liberal application for (*sic*) the rules should be an effort on the part of the party invoking liberality to at least proffer a reason for its failure to comply therewith. In this case, petitioner has proffered none. Neither has there been at least a smidgen of effort to rectify the infirmities. Petitioners instead persistently insist that We order the Secretary of the Department of Environment and Natural Resources to elevate the records of the case and leaving the petition still infirmed.

We have likewise scrutinized Annex V of the petition upon which counsel for petitioners relies for his authority to sign the certification of non-forum shopping and verification in petitioners' behalf. We, however, find nothing in said document showing Atty. Mariano Pefianco's authority to sign for petitioners. The fact that a portion of the litigated property has been promised to Atty. Mariano Pefianco as payment for his legal services does not make him a party to the case. Any inchoate right arising out of their agreement does not elevate him to a status of a party litigant. We reiterate the legal basis for which We dismiss the petition, thus:

> x x x The Supreme Court has pronounced in *Altres v. Empleo* –
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> x x x. Finally, the certification against forum shopping must be executed by the party pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

As We find that the petition has remained infirmed, We rule to deny the instant motion.[17]

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[17] *Rollo,* pp. 83-86.

Clearly, the dismissal of the petition for review filed by the complainant (as counsel of the petitioners in CA G.R. CEB SP No. 06984) is supported by applicable jurisprudence and provisions of the Rules of Court, and not from an extrajudicial source. The complainant's allegation of partiality against the respondent-Justices is plainly unfounded.

Justice Hernando points out that this is not the first instance that the complainant has filed an administrative case against him; that he was a respondent in IPI No. 13-217-CA-J[18] filed by the same complainant, which case was dismissed outright by the Court and is now closed and terminated after the Court's denial of the three (3) subsequent motions for reconsideration filed by the complainant. Also, he cites that many judges and justices in the Visayas Region have been at the receiving end of baseless administrative suits from the complainant.

Apart from the dismissal of the present administrative complaint, Justice Hernando prays that the complainant be disbarred due to his penchant for filing baseless administrative complaints against members of the bench and, also, by the fact that he blatantly ignored the Court's resolution suspending him from the practice of law.

In *In Re: Joaquin T. Borromeo, Ex Rel. Cebu City Chapter of the Integrated Bar of the Philippines*,[19] we found the complainant, Joaquin T. Borromeo, liable for constructive contempt or indirect contempt of court for filing grossly unfounded cases against judges and court officers in the different rungs of the Judiciary, including the lawyers appearing for his adversaries. We adjudged Borromeo's actions to be an "abuse of and interference with judicial rules and processes, gross disrespect to courts and judges, and improper conduct directly impeding, obstructing and degrading the administration of justice."[20]

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[18] Entitled *Atty. Mariano R. Pefianco v. Justices Ma. Luisa C. Quijano Padilla, Ramon Paul L. Hernando and Carmelita Salandanan-Manahan.*

[19] 311 Phil. 441 (1995).

[20] *Id*. at 504-505.

For his apparent tendency to file unsubstantiated administrative cases against judges and justices, we require the present complainant to show cause in writing, within ten (10) days from notice of this decision, why he should not be punished for indirect contempt. This is to emphasize that *unfounded* administrative charges against members of the bench degrade the judicial office and greatly interfere with the due performance of their functions in the Judiciary.

Also, we refer this case to the Office of the Bar Confidant for proper investigation of the complainant's alleged violation of his suspension from the practice of law.

Indeed, this Court, in a resolution dated August 1, 2012, in Administrative Case No. 6116, suspended the complainant for one (1) year from the practice of law for violation of the Lawyer's Oath, and Rule 1.01[21] Canon 1 and Rule 9.02[22] Canon 9 of the Code of Professional Responsibility. Unless his suspension has been lifted by this Court, the complainant remains to be suspended and is prohibited from engaging in the practice of law. We have held that the lifting of suspension from the practice of law is not automatic upon the end of the period stated in the decision; an order from the Court lifting the suspension is necessary to enable the suspended lawyer to resume his or her legal practice.[23]

As to the other charges against the respondent-Justices, *i.e.,* gross incompetence, gross ignorance of the law, gross misconduct, evident bad faith, and gross inexcusable negligence, we find these charges to be similarly unfounded as the complainant, who carries the burden of proof, has miserably failed to substantiate his allegations with clear and convincing evidence.

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[21] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[22] Rule 9.02 – A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, x x x.

[23] *Maniago v. De Dios,* 631 Phil. 139 (2010), citing *J.K. Mercado and Sons Agricultural Enterprises, Inc. v De Vera,* A.C. No. 3066; *De Vera v. Encanto,* A.C. No. 4438.

We likewise dismiss the charge of violation of Sec. 3(e) of R.A. No. 3019 for being criminal in nature; thus, it is not the proper subject of an administrative case.

WHEREFORE, we hereby issue the following orders:

(a) **DISMISS** the administrative complaint filed by Atty. Mariano R. Pefianco against Associate Justices Maria Elisa Sempio Diy, Carmelita Salandanan-Manahan, and Ramon Paul L. Hernando, for utter lack of merit;

(b) **REQUIRE** Atty. Mariano R. Pefianco to show cause in writing, within ten (10) days from notice, why he should not be punished for indirect contempt of court; and

(c) **REFER** the case for investigation to the Office of the Bar Confidant to determine whether Atty. Mariano R. Pefianco has violated the terms and conditions of his suspension from the practice of law which this Court imposed upon him in a resolution dated August 1, 2012, in Administrative Case No. 6116.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Mendoza, J., on leave.

EN BANC

[IPI No. 15-35-SB-J. February 23, 2016]

RE: VERIFIED COMPLAINT DATED JULY 13, 2015 OF ALFONSO V. UMALI, JR., *complainant, vs.* **HON. JOSE R. HERNANDEZ, ASSOCIATE JUSTICE, SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; JUDGES AND JUSTICES; ADMINISTRATIVE CHARGES; WHILE THE COURT WILL NEVER TOLERATE OR CONDONE ANY CONDUCT, ACT, OR OMISSION THAT WOULD VIOLATE THE NORM OF PUBLIC ACCOUNTABILITY OR DIMINISH THE PEOPLE'S FAITH IN THE JUDICIARY, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE CASES IS SUBSTANTIAL EVIDENCE OR SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.—** We stress at the outset that in administrative proceedings, complainants have the burden of proving the allegations in their complaints by substantial evidence. While the Court will never tolerate or condone any conduct, act, or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary, the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. [U]mali failed to support by substantial proof any of the allegations in his complaint.

2. **ID.; ID.; ID.; TO SATISFY THE SUBSTANTIAL EVIDENCE REQUIREMENT FOR ADMINISTRATIVE CASES, HEARSAY EVIDENCE SHOULD NECESSARILY BE SUPPLEMENTED AND CORROBORATED BY OTHER EVIDENCE THAT ARE NOT HEARSAY.—** The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place ***when the circumstances - including those derived from hearsay evidence – sufficiently prove its occurrence***. It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay. In the present case, however, **the hearsay allegations**

constituted the totality of Umali's evidence. The records did not contain any other piece of evidence to supplement the hearsay evidence. [U]mali did not even attach any affidavit to the complaint relating to or tending to support the alleged attempted extortion. Umali relied mainly on surmises and conjectures, and on the mere fact that the Sandiganbayan rulings penned by Justice Hernandez were adverse to him.

3. **ID.; ID.; ID.; ABSENT EVIDENCE TO THE CONTRARY, THE PRESUMPTION THAT A JUSTICE REGULARLY PERFORMED HIS OR HER DUTIES PREVAILS.—** We additionally point out that the present administrative complaint was filed on July 13, 2015. Per Umali's allegation, the extortion attempt was made before April 20, 2015 – the date of the Sandiganbayan decision convicting him and two others of violating the provision of the Anti-Graft and Corrupt Practices Act. We are at a loss as to why Umali waited for the Sandiganbayan's conviction and the denial of his motions for reconsideration before he reported the attempted extortion; the time element suggests that Umali's filing depended on the outcome of the case. Surprisingly, Umali did not even mention the extortion attempt in his *Motion for Voluntary Inhibition* and *Reply (To Opposition to the Motion for Voluntary Inhibition of the Honorable Presiding Justice)* dated May 28, 2015 and June 8, 2015, respectively. Under thes circumstances on record and in the absence of evidence to the contrary, the presumption that Justice Hernandez regularly performed his duties cannot but prevail.

4. **ID.; ID.; ID.; THE FILING OF A REPLY IN ORDER TO COMMENT ON A MOTION FOR RECONSIDERATION IS A MATTER SUBJECT TO THE ANTI-GRAFT COURT'S SOUND DISCRETION AND ITS DENIAL ALONE DOES NOT AMOUNT TO BIAS OR PARTIALITY.—** Contrary to what Umali alleged, the records do not show that Justice Hernandez instructed the division clerk of court (DCC) not to give Umali a period of time to file a reply to the prosecution's comment on his (Umali's) motion for reconsideration. The records reveal that the DCC told Umali's lawyer that the court (Sandiganbayan) did not give him (DCC) instructions to allow the parties to file a reply, and that the counsel could just file a motion to admit the reply "for the Court to act." Umali, in fact, filed a reply to the

prosecution's comment/opposition to his motion for reconsideration. In any event, there was nothing in the Sandiganbayan Rules that gives Umali the right to file a reply to the prosecution's comment to his motion for reconsideration. The filing of a reply in order to comment on a motion for reconsideration is a matter subject to the Anti-Graft Court's sound discretion; its denial alone does not amount to bias or partiality.

5. **ID.; ID.; ID.; A JUDGE MAY PROPERLY INTERVENE IN THE PRESENTATION OF EVIDENCE TO EXPEDITE AND PREVENT UNNECESSARY WASTE OF TIME AND CLARIFY OBSCURE AND INCOMPLETE DETAILS IN THE COURSE OF THE TESTIMONY OF THE WITNESS OR THEREAFTER, BUT THIS POWER SHOULD BE SPARINGLY AND JUDICIOUSLY USED.—** [W]e find unmeritorious Umali's allegation that Justice Hernandez lawyered for the prosecution when he "thoroughly confronted" defense witness Atty. Rafael Infantado, during cross-examination. It is settled that [a]judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter. Questions designed to clarify points and to elicit additional relevant evidence are not improper. Nonetheless, the judge should limit himself to clarificatory questions and this power should be sparingly and judiciously used. The rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.

6. **ID.; ID.; ID.; MERE SUSPICION OF PARTIALITY IS NOT ENOUGH, AS THERE MUST BE SUFFICIENT EVIDENCE TO PROVE THE SAME, AS WELL AS A MANIFEST SHOWING OF BIAS AND PARTIALITY STEMMING FROM AN EXTRAJUDICIAL SOURCE OR SOME OTHER BASIS. —** We also find unmeritorious Umali's insinuation that Justice Hernandez "blindly followed the orders" of Justice Gregory Ong because the latter was his good friend. Umali tried to impress upon the Court that Justice Hernandez – upon orders of Ong – convicted him of the crime charged because he did not help Justice Ong to convince President Aquino intervene in the administrative case he was then facing in this Court. We point out, however, that aside from his bare

claims, Umali did not present any evidence to support these allegations. x x x. Extrinsic evidence is required to establish bias, bad faith, malice, or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial.

7. **ID.; ID.; ID.; AN ADMINISTRATIVE COMPLAINT IS NOT THE REMEDY FOR EVERY ACT OF A JUDGE DEEMED ABERRANT OR IRREGULAR WHERE A JUDICIAL REMEDY EXISTS AND IS AVAILABLE.—** An administrative complaint is not the remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. In the present case, one basis of Umali's administrative complaint against Justice Hernandez was the Sandiganbayan's ruling that he (Umali) had conspired with the other co-accused. This alleged error – pertaining to the exercise of Justice Hernandez's adjudicative functions – cannot be corrected through administrative proceedings, but through judicial remedies.

8. **ID.; ID.; ID.; TO CONSTITUTE GROSS IGNORANCE OF THE LAW, IT IS NOT ENOUGH THAT THE SUBJECT DECISION, ORDER OR ACTUATION OF A JUDGE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES IS CONTRARY TO EXISTING LAW AND JURISPRUDENCE BUT, MOST IMPORTANTLY, HE MUST BE MOVED BY BAD FAITH, FRAUD, DISHONESTY, OR CORRUPTION.—** [W]e find that the charge of gross ignorance of the law based on what Umali perceived to be an erroneous conclusion of law has no legal basis. To constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of a judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, **he must be moved by bad faith, fraud, dishonesty, or corruption**. [U]mali utterly failed to substantiate his claim that Justice Hernandez tried to extort ₱15 million from him in exchange for his acquittal. In addition, the Sandiganbayan ruling was a collegial decision, with Justice Hernandez as the *ponente,* and Associate Justices Quiroz and

Cornejo as the concurring magistrates. It bears stressing that in a collegial court, the members act on the basis of consensus or majority rule. Umali cannot impute what he perceived to be an erroneous conclusion of law to one specific Justice only.

9. **ID.; ID.; ID.; THE COURT WILL NOT BE THE INSTRUMENT TO DESTROY THE REPUTATION OF ANY MEMBER OF THE BENCH OR ANY OF ITS EMPLOYEES BY PRONOUNCING GUILT ON MERE SPECULATION.—** We emphasize that this Court will not shirk from its responsibility of imposing discipline upon erring employees and members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice. This Court will not be the instrument to destroy the reputation of any member of the bench or any of its employees by pronouncing guilt on mere speculation.

BERSAMIN, ***J., concurring and dissenting opinion*****:**

1. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; EXTRAJUDICIAL DECLARATIONS; ALTHOUGH STRICT ADHERENCE TO TECHNICAL RULES IS NOT REQUIRED IN ADMINISTRATIVE PROCEEDINGS, THIS LENITY SHOULD NOT BE CONSIDERED A LICENSE TO DISREGARD FUNDAMENTAL EVIDENTIARY RULES, AS THE EVIDENCE PRESENTED MUST AT LEAST HAVE A MODICUM OF ADMISSIBILITY IN ORDER FOR IT TO HAVE PROBATIVE VALUE AND THE EVIDENCE MUST BE SUBSTANTIAL.—** The evidence required in administrative cases is concededly only substantial; that is, the requirement of substantial evidence is satisfied although the evidence is not overwhelming, for as long as there is reasonable ground to believe that the person charged is guilty of the act complained of. **However, the substantial evidence rule should not be invoked to sanction the use in administrative proceedings of clearly inadmissible evidence. Although strict adherence to technical rules is not required in administrative proceedings, this lenity should not be considered a license to disregard fundamental evidentiary rules. The evidence**

presented must at least have a modicum of admissibility in order for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Administrative proceedings should not be treated differently under pain of being perceived as arbitrary in our administrative adjudications.

2. **ID.; ID.; ID.; ID.; HEARSAY RULE; THE PERSONAL KNOWLEDGE OF A WITNESS IS A SUBSTANTIVE PREREQUISITE FOR ACCEPTING TESTIMONIAL EVIDENCE THAT ESTABLISHES THE TRUTH OF A DISPUTED FACT, AS A WITNESS BEREFT OF PERSONAL KNOWLEDGE OF THE DISPUTED FACT CANNOT BE CALLED UPON FOR THAT PURPOSE BECAUSE HER TESTIMONY DERIVES ITS VALUE NOT FROM THE CREDIT ACCORDED TO HER AS A WITNESS PRESENTLY TESTIFYING BUT FROM THE VERACITY AND COMPETENCY OF THE EXTRAJUDICIAL SOURCE OF HER INFORMATION.** — A most basic rule is that a witness can only testify on matters that he or she knows of her personal knowledge. **This rule does not change even if the required standard be substantial evidence, preponderance of evidence, proof beyond reasonable doubt, or clear and convincing evidence**. x x x. **The concern of the hearsay rule is not the credibility of the witness presently testifying, but the veracity and competence of the extrajudicial source of the witness's information.** To be clear, personal knowledge is a substantive prerequisite for accepting testimonial evidence to establish the truth of a disputed fact. The Court amply explained this in *Patula v. People*: To elucidate why x x x hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, *Rules of Court,* a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court.* **The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed**

fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

3. **ID.; ID.; ID.; ID.; ID.; THE WEIGHT OF HEARSAY TESTIMONY DEPENDS NOT UPON THE VERACITY OF THE WITNESS BUT UPON THE VERACITY OF THE OTHER PERSON GIVING THE INFORMATION TO THE WITNESS WITHOUT OATH.—** In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined. It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

4. **ID.; ID.; ID.; ID.; ID.; THE THEORY OF THE HEARSAY RULE IS THAT WHEN A HUMAN UTTERANCE IS OFFERED AS EVIDENCE OF THE TRUTH OF THE FACT ASSERTED, THE CREDIT OF THE ASSERTOR BECOMES THE BASIS OF AND, THEREFORE, THE ASSERTION CAN BE RECEIVED AS EVIDENCE ONLY WHEN MADE ON THE WITNESS STAND, SUBJECT TO THE TEST OF CROSS-EXAMINATION. HOWEVER, IF AN EXTRAJUDICIAL UTTERANCE IS OFFERED, NOT AS AN ASSERTION TO PROVE THE MATTER**

ASSERTED BUT WITHOUT REFERENCE TO THE TRUTH OF THE MATTER ASSERTED, THE HEARSAY RULE DOES NOT APPLY.— [T]he theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefor, between (*a*) the fact that the statement was made, to which the hearsay rule does not apply, and (*b*) the truth of the facts asserted in the statement, to which the hearsay rule applies.

5. **ID.; ID.; ID.; ID.; ID.; RATIONALE FOR EXCLUDING HEARSAY TESTIMONY; RIGHT TO CROSS-EXAMINE THE ADVERSE PARTY'S WITNESS, BEING THE ONLY MEANS OF TESTING THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES, IS ESSENTIAL TO THE ADMINISTRATION OF JUSTICE. —** Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice. x x x. We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to **its** not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and

articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.

D E C I S I O N

BRION, *J.*:

Before us is an administrative complaint filed by Alfonso V. Umali, Jr. against Sandiganbayan Associate Justice Jose R. Hernandez for grave misconduct and gross ignorance of the law.

Background Facts

Complainant Alfonso V. Umali, then the Provincial Administrator of Oriental Mindoro, was one of the accused in Criminal Case No. 23624 for violation of Sections 3(e) and (g) of Republic Act No. 3019 (the Anti-Graft and Corrupt Practice Act) before the Sandiganbayan.

In its decision[1] dated September 9, 2008, the Sandiganbayan (Fourth Division) denied the *motion to dismiss by way of a demurrer to evidence* filed by the accused Umali, Rodolfo Valencia, Pedrito Reyes, Jose Enriquez and Jose Leynes, and convicted them of the crime charged. Accordingly, it sentenced them to suffer the indeterminate penalty of six (6) years and one (1) month to ten (10) years, as well as perpetual disqualification from holding public office.

The Sandiganbayan eventually reconsidered this decision, and allowed the accused to present evidence.

In its decision dated April 20, 2015, the Sandiganbayan found Umali and two (2) others[2] [guilty beyond reasonable doubt of violating "Section 3(e) in relation to 3(g)"[3] of R.A. No. 3019,

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[1] Penned by Associate Justice Jose R. Hernandez, and concurred in by Associate Justices Gregory S. Ong and Samuel Martires, *rollo,* Annex "6", unnumbered pages.

[2] Namely Governor Rodolfo Valencia and Provincial Board Member Romualdo Bawasanta.

[3] *Rollo,* Annex "1", unnumbered pages.

and sentenced them to suffer the indeterminate penalty of six (6) years and one (1) month to ten (10) years.[4] This decision was penned by Justice Hernandez, and concurred in by Associate Justices Alex Quiroz and Maria Cristina Cornejo.

On May 4, 2015, Umali filed a motion for reconsideration assailing the Sandiganbayan's April 20, 2015 decision. He also filed a *motion for voluntary inhibition* of Justice Hernandez on May 28, 2015.

On June 2, 2015, Umali filed a *motion for leave to admit supplement to the motion for reconsideration.*[5]

Justice Hernandez denied, among others,[6] Umali's *motion for voluntary inhibition* resolution dated July 16, 2015.

The Complaint-Affidavit

In his *Complaint-Affidavit,* Umali alleged that before the April 20, 2015 decision of the Sandiganbayan came out, Ruel Ricafort— who was the cousin of the wife of Justice Hernandez — approached his "camp." According to Umali, it was "relayed" to him that he needed to pay ₱15 million if he wanted to be acquitted; and that it was a one-time, "take it or leave it" offer.

Umali also claimed that he caught the ire of Justice Hernandez when he refused to give in to the request of Justice Gregory Ong who wanted to seek the President's intervention in the administrative case he (Justice Ong) was facing in the Supreme Court. According to Umali, Justice Ong was Justice Hernandez's good friend, and that the former exercised ascendancy and influence over the latter.

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[4] The Sandiganbayan also imposed on them the penalty of loss of all retirement and gratuity benefits and perpetual disqualification from holding public office. It likewise ordered them to pay, jointly and severally, ₱2.5 million to the Province of Oriental Mindoro.

[5] The records showed that Umali also filed a Reply (To Opposition to the Motion for Voluntary Inhibition) on June 8, 2015.

[6] Justice Hernandez also denied the *Joint Motion for the Disqualification/ Recusal or Inhibition of the Hon. Chairman Jose R. Hernandez* filed by accused Valencia and Bawasanta.

Umali further alleged that Justice Hernandez showed manifest partiality in Criminal Case No. 26324 when he:

a. instructed the clerk of court not to allow the filing of a *reply* after the prosecution submitted its *comment to the motion for reconsideration;*

b. asked numerous loaded questions to the witnesses and 'lawyered' for the prosecution; and

c. declared, *"You can always go to the Supreme Court"* to Umali's counsels when they were explaining the motions they filed with the Sandiganbayan.

Finally, Umali maintained that the Sandiganbayan's judgment of conviction was an "unjust judgment motivated by ill will," and dictated by Justice Hernandez's partiality. Umali argued that his act of signing a voucher should not have been used as a basis to rule that he conspired with the other accused.

In the Court's resolution dated August 4, 2015, we required Justice Hernandez to file a Comment on the complaint.

Justice Hernandez's Comment

In his comment, Justice Hernandez countered that Umali's complaint contained "nothing more than bare allegations and surmises." He added that Umali's narration of the alleged extortion was lacking in details, such as the date, time, and place of the extortion try, as well as the circumstances surrounding Ricafort's supposed interaction with Umali's "camp." He additionally pointed out that Umali had no personal knowledge of the alleged attempted extortion.

Justice Hernandez also pointed out that Umali did not even attach Ricafort's affidavit in his complaint; he also did not name the person/s from his (Umali's) camp whom Ricafort allegedly approached.

Justice Hernandez also questioned why Umali did not immediately report the alleged extortion to the National Bureau of Investigation *(NBI)* or to the law enforcement agencies. He added that Umali waited for three months after the promulgation of his judgment of conviction to file a complaint.

Finally, Justice Hernandez maintained that the Sandiganbayan's judgment of conviction was a ruling of a collegial body. He added that the complaint was a collateral attack on the correctness of the Anti-Graft Court's decision.

THE COURT'S RULING

We **dismiss** the administrative complaint against Justice Hernandez for lack of merit.

We stress at the outset that in administrative proceedings, complainants have the burden of proving the allegations in their complaints by substantial evidence. While the Court will never tolerate or condone any conduct, act, or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary,[7] the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[8]

As explained below, Umali failed to support by substantial proof any of the allegations in his complaint.

a. The alleged extortion attempt

Under Section 1, Rule 140 of the Rules of Court, as amended by A.M. 01-8-10-SC, proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a **verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations,** or upon an anonymous complaint, supported by public records of indubitable integrity.

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[7] *Dr. Cruz v. Judge lturralde,* 450 Phil. 77, 88 (2003), citing *Sarmiento v. Salamat,* 364 SCRA 301-302, September 4, 2001.

[8] See *Ocampo v. Arcaya-Chua,* A.M. OCA I.P.I No. 07-2630-RTJ, Apri1 23, 2010, 619 SCRA 59, 92, citing *Español v. Mupas,* A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13, 37-38.

The totality of Umali's accusation in his complaint-affidavit which claimed that Justice Hernandez tried to extort ₱15 million from him in exchange for his acquittal consisted of the following allegations:

x x x x x x x x x

5. Before the Decision dated 20 April 2015 came out convicting respondents in Criminal Case No. 23624, my camp was approached by a certain Mr. Ruel Ricafort, a person who was very close to Justice Hernandez and his wife. Indeed, it was clearly emphasized to me that Mr. Ricafort is a cousin of the wife of Justice Hemandez. It was further relayed that if I wanted to be acquitted, **all I needed to do was pay Php15,000,000.00 to Justice Hernandez.**

x x x x x x x x x

8. As mentioned, the most glaring misconduct of respondent Justice is his attempt to extort money from me which occurred sometime before the promulgation of the Decision dated 20 April 2015. Mr. Ricafort contacted someone from my camp and named their price of **FIFTEEN MILLION PESOS (P15M)** in exchange for my acquittal. He further stated (as it was relayed to me) that this is a "one-time offer", and that I should "take it or leave it." I was completely taken aback and immediately rejected it. I made sure that this (my rejection) was relayed to them. Sure enough, I was convicted thereafter. (Emphasis in the original)

These allegations showed that Umali did not have personal knowledge of the fact attested to, i.e., extortion attempt. As he himself alleged, the information was merely "relayed" to him. Simply put, Umali was relying in hearsay evidence to support his complaint. Not surprisingly, he did not provide any further details on the so-called extortion attempt in the complaint, such as the time and place of the incident; the identities of the persons from his camp who were approached by Ricarte; and the person who relayed to him the ₱15 million demand. Significantly, the complaint did not also include any affidavit from any person from Umali's 'camp' who witnessed the extortion try.

Clearly, Umali's complaint utterly lacked specifics for the Court to conclude — based on substantial evidence — that Justice

Hernandez demanded ₱15 million from Umali in exchange for the latter's acquittal.

The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place *when the circumstances — including those derived from hearsay evidence — sufficiently prove its occurrence.* It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay.[9]

In the present case, however, **the hearsay allegations constituted the totality of Umali's evidence**. The records did not contain any other piece of evidence to supplement the hearsay evidence. As earlier stated, Umali did not even attach any affidavit to the complaint relating to or tending to support the alleged attempted extortion. Umali relied mainly on surmises and conjectures, and on the mere fact that the Sandiganbayan rulings penned by Justice Hernandez were adverse to him.

We additionally point out that the present administrative complaint was filed on July 13, 2015. Per Umali's allegation, the extortion attempt was made before April 20, 2015 — the date of the Sandiganbayan decision convicting him and two others of violating the provision of the Anti-Graft and Corrupt Practices Act. We are at a loss as to why Umali waited for the Sandiganbayan's conviction and the denial of his motions for reconsideration before he reported the attempted extortion; the time element suggests that Umali's filing depended on the outcome of the case. Surprisingly, Umali did not even mention the extortion

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[9] See Justice Brion's Separate Concurring Opinion, *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan,* A.M. No. SB-14-21-J [Formerly A.M. N0. 13-10-06-SB], September 23, 2014.

attempt in his *Motion for Voluntary Inhibition* and *Reply (To Opposition to the Motion for Voluntary Inhibition of the Honorable Presiding Justice)* dated May 28, 2015 and June 8, 2015, respectively. Under these circumstances on record and in the absence of evidence to the contrary, the presumption that Justice Hernandez regularly performed his duties cannot but prevail.

b. No Manifest Partiality

Contrary to what Umali alleged, the records do not show that Justice Hernandez instructed the division clerk of court (DCC) not to give Umali a period of time to file a reply to the prosecution's comment on his (Umali's) motion for reconsideration. The records reveal that the DCC told Umali's lawyer that the court (Sandiganbayan) did not give him (DCC) instructions to allow the parties to file a reply, and that the counsel could just file a motion to admit the reply "for the Court to act." Umali, in fact, filed a reply to the prosecution's comment/ opposition to his motion for reconsideration.

In any event, there was nothing in the Sandiganbayan Rules that gives Umali the right to file a reply to the prosecution's comment to his motion for reconsideration. The filing of a reply in order to comment on a motion for reconsideration is a matter subject to the Anti-Graft Court's sound discretion; its denial alone does not amount to bias or partiality.

We also find no sufficient basis to rule that Justice Hernandez exhibited manifest partiality when he stated, *"You can always go to the Supreme Court,"* during the hearing of Umali' s motions.

We point out that the exact utterance made by Justice Hernandez was, *"You still have the Supreme Court."* This remark was made in connection with Umali 's motion for inhibition which was set for hearing on that day, and not on his motion for reconsideration. Umali' s insinuation that the remark implied that he should no longer expect "any change of heart and mind" insofar as the judgment of conviction was concerned," was therefore misplaced. There was nothing in this statement indicating that Justice Hernandez had already prejudged the case against Umali.

Similarly, we find unmeritorious Umali's allegation that Justice Hernandez lawyered for the prosecution when he "thoroughly confronted" defense witness Atty. Rafael Infantado, during cross-examination.

It is settled that [a] judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter. Questions designed to clarify points and to elicit additional relevant evidence are not improper. Nonetheless, the judge should limit himself to clarificatory questions and this power should be sparingly and judiciously used. The rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.[10]

In the present case, we initially point out that Umali's complaint did not faithfully reproduce the exchanges during the hearing on February 9, 2011, as reflected in the TSN. We find it reprehensible that while Umali was imputing bias on Justice Umali based on what transpired during the hearings, he did not accurately quote the TSN in his complaint.

At any rate, piecemeal citations of the exchanges during the February 9, 2011 Sandiganbayan (Fourth Division) hearing in Criminal Case No. 23624 are glaringly insufficient to establish that Justice Hernandez "lawyered" for the prosecution. On the contrary, Justice Hernandez's questions were merely designed to clarify points and elicit additional information, particularly on whether the request of authority of then Governor Valencia from the *Sangguniang Panlalawigan* of Oriental Mindoro to enter into an agreement was included in the agenda. Notably, the Division's Chairman also asked clarificatory questions on this matter.

We also find unmeritorious Umali's insinuation that Justice Hernandez "blindly followed the orders" of Justice Gregory Ong

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[10] See *Dela Cruz (Concerned Citizens of Legaspi City) v. Judge Carretas*, 559 Phil. 5, 18 (2007).

because the latter was his good friend. Umali tried to impress upon the Court that Justice Hernandez — upon orders of Ong — convicted him of the crime charged because he did not help Justice Ong to convince President Aquino intervene in the administrative case he was then facing in this Court. We point out, however, that aside from his bare claims, Umali did not present any evidence to support these allegations.

We also find Umali's reference to *Jamsani-Rodriguez v.* Ong[11] to establish Justice Ong's ascendancy over Justice Hernandez to be misplaced. In this case, the Court admonished Justice Hernandez for, among others, violating the Sandiganbayan's Revised Internal Rules. The Court, however, ruled out malice of the part of Justices Hernandez, and held that:

> As mere members of the Fourth Division, Justice Hernandez and Justice Ponferrada had no direction and control of *how* the proceedings of the Division were conducted. Direction and control were vested in Justice Ong, as the Chairman. Justice Hernandez and Justice Ponferrada simply relied without malice on the soundness and wisdom of Justice Ong's discretion as their Chairman, which reliance without malice lulled them into traveling the path of reluctance to halt Justice Ong from his irregular leadership. We hold that their liabilities ought to be much diminished by their lack of malice.[12]

Extrinsic evidence is required to establish bias, bad faith, malice, or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself. Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial.[13]

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[11] A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626.

[12] *Id.* at 655-656.

[13] See *En Banc's* Unsigned Resolution in *Edgardo M. Rico v. Justice Edgardo T. Lloren,* A.M. OCA I.P.I No. 11-194-CA-J, January 17,2012.

c. Judicial remedies available

An administrative complaint is not the remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available.[14]

In the present case, one basis of Umali' s administrative complaint against Justice Hernandez was the Sandiganbayan's ruling that he (Umali) had conspired with the other co-accused. This alleged error — pertaining to the exercise of Justice Hernandez's adjudicative functions — cannot be corrected through administrative proceedings, but through judicial remedies.

At any rate, we find that the charge of gross ignorance of the law based on what Umali perceived to be an erroneous conclusion of law has no legal basis. To constitute gross ignorance of the law, it is not enough that the subject decision, order, or actuation of a judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, **he must be moved by bad faith, fraud, dishonesty, or corruption.**[15] As earlier discussed, Umali utterly failed to substantiate his claim that Justice Hernandez tried to extort ₱15 million from him in exchange for his acquittal.

In addition, the Sandiganbayan ruling was a collegial decision, with Justice Hernandez as the *ponente,* and Associate Justices Quiroz and Cornejo as the concurring magistrates. It bears stressing that in a collegial court, the members act on the basis of consensus or majority rule. Umali cannot impute what he perceived to be an erroneous conclusion of law to one specific Justice only.

We emphasize that this Court will not shirk from its responsibility of imposing discipline upon erring employees and members of the bench. At the same time, however, the Court

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[14] See *En Banc's* Unsigned Resolution in *Isidro Antonio Mirasol, et al. v. Justice Vicente L. Yap*, A.M. OCA IPI No. 06-95-CA-J, July 18, 2006.

[15] See *Martinez v. De Vera,* A.M. No. MTJ-08-1718, March 16, 2011, 645 SCRA 377, 389-390. (emphasis ours; citations omitted).

should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice. This Court will not be the instrument to destroy the reputation of any member of the bench or any of its employees by pronouncement on mere speculation.[16]

WHEREFORE, premises considered, we **DISMISS** the administrative complaint against Sandiganbayan Associate Justice Jose R. Hernandez for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Bersamin, J., see concurring and dissenting opinion.

Mendoza, J., on leave.

CONCURRING & DISSENTING OPINION

BERSAMIN, *J.*:

I wish so much not having to write this separate opinion because I am most willing to join the inexorable result so compellingly justified by Justice Brion. However, my attention has been seized by the following passage in the main opinion of Justice Brion, to wit:

> The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place ***when the circumstances — including those derived from hearsay evidence — sufficiently prove its occurrence***. It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should

[16] *Rivera v. Judge Mendoza,* 529 Phil. 600, 607 (2006).

necessarily be supplemented and corroborated by other evidence that are not hearsay.

In the present case, however, **the hearsay allegations constituted the totality of Umali's evidence**. The records did not contain any other piece of evidence to supplement the hearsay evidence. As earlier stated, Umali did not even attach any affidavit to the complaint relating to or tending to support the alleged attempted extortion. Umali relied mainly on surmises and conjectures, and on the mere fact that the Sandiganbayan rulings penned by Justice Hernandez were adverse to him.

Through this separate opinion, I simply wish to comment on the foregoing passage lest I be misperceived as departing from the standard on the admission and use as evidence of *extrajudicial declarations* whose verity and accuracy are not within the personal knowledge of the declarant. I distinctly remember that I emphatically discoursed on the standard in my Concurring and Dissenting Opinion in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September* 26, *2013 Against Associate Justice Gregory* S. *Ong, Sandiganbayan,*[1] as follows:

The evidence required in administrative cases is concededly only substantial; that is, the requirement of substantial evidence is satisfied although the evidence is not overwhelming, for as long as there is reasonable ground to believe that the person charged is guilty of the act complained of. **However, the substantial evidence rule should not be invoked to sanction the use in administrative proceedings of clearly inadmissible evidence. Although strict adherence to technical rules is not required in iadministrative proceedings, this lenity should not be considered a license to disregard fundamental evidentiary rules. The evidence presented must at least have a modicum of admissibility in order for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In my opinion,**

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[1] A.M. No. SB-14-21-J, September 23, 2014, 736 SCRA 12, *(per curiam)*.

administrative proceedings should not be treated differently under pain of being perceived as arbitrary in our administrative adjudications.

The statements of Luy and Sula being relied upon were based not on the declarants' personal knowledge, but on statements made to them by Napoles. I find it very odd that the Majority would accord credence to such statements by Luy and Sula if they themselves did not personally acquire knowledge of such matters. I insist that elementary evidentiary rules must be observed even in administrative proceedings.

A most basic rule is that a witness can only testify on matters that he or she knows of her personal knowledge. **This rule does not change even if the required standard be substantial evidence, preponderance of evidence, proof beyond reasonable doubt, or clear and convincing evidence**. The observations that the statements of Luy and Sula were made amidst the "challenging and difficult setting" of the Senate hearings, and that the witnesses were "candid, straightforward and categorical" during the administrative investigation did not excise the defect from them. **The concern of the hearsay rule is not the credibility of the witness presently testifying, but the veracity and competence of the extrajudicial source of the witness's information.**

To be clear, personal knowledge is a substantive prerequisite for accepting testimonial evidence to establish the truth of a disputed fact. The Court amply explained this in *Patula v. People:*

> To elucidate why x x x hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, *Rules of Court,* a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court.* **The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence, that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.**

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends notupon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between *(a)* the fact that the statement was made, to which the hearsay rule does not apply, and *(b)* the truth of the facts asserted in the statement, to which the hearsay rule applies.

Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the *Rules of Court* offers two solutions. The first solution is to require that *all* the witnesses in a judicial trial or hearing be examined only in court *under oath or affirmation.* Section 1, Rule 132 of the *Rules of Court* formalizes this solution, *viz:*

> Section 1. *Examination to be done in open court.* – The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (la)

The second solution is to require that *all* witnesses be *subject to the cross-examination by the adverse party.* Section 6, Rule 132 of the *Rules of Court* ensures this solution thusly:

> Section 6. *Cross-examination; its purpose and extent.* – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue, (8a)

Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, *i.e.,* Section

14(2), Article III, of the 1987 *Constitution,* which guarantees that: *"In all criminal prosecutions, the accused shall x x x enjoy the right x x x to meet the witnesses face to face x x x,"* the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.[2]

In my humble view, the standard should stand to guide the courts in the admission and use of extrajudicial declarations of witnesses who are bereft of the personal competence to know the truth of the facts declared.

NONETHELESS, I concur in the result.

EN BANC

[G.R. No. 188720. February 23, 2016]

QUEZON CITY PTCA FEDERATION, INC., *petitioner, vs.* **DEPARTMENT OF EDUCATION, represented by SECRETARY JESLI A. LAPUS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* THE COURT WILL NOT ENTERTAIN A DIRECT

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[2] *Id.* at 144-149 (bold underscoring is part of the original text).

INVOCATION OF ITS JURISDICTION UNLESS THE REDRESS DESIRED CANNOT BE OBTAINED IN THE APPROPRIATE LOWER COURTS, AND EXCEPTIONAL AND COMPELLING CIRCUMSTANCES JUSTIFY THE RESORT TO THE EXTRAORDINARY REMEDY OF A WRIT OF *CERTIORARI*.— It is true that petitions for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure fall under the original jurisdiction of this court. However, this is also true of regional trial courts and the Court of Appeals. "[T]his Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of *certiorari*." Indeed, "concurrence [of jurisdiction] does not allow unrestricted freedom of choice of the court forum. A direct invocation of the Supreme Court's original jurisdiction to issue this writ should be allowed only when there are special and important reasons, clearly and specifically set out in the petition."

2. **ID.; ID.; ID.; THE COURT OF APPEALS IS WELL-EQUIPPED TO RENDER RELIABLE, REASONABLE, AND WELL-GROUNDED JUDGMENTS IN CASES AVERRING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. —** That the effects of the Department Order extend throughout the country is a concern that can be addressed by recourse to the Court of Appeals. Its territorial jurisdiction, much like this court's, also extends throughout the country. Moreover, the Court of Appeals is well-equipped to render reliable, reasonable, and well-grounded judgments in cases averring grave abuse of discretion amounting to lack or excess of jurisdiction. Recourse to the Court of Appeals is not a futile exercise that results to nothing more than the clogging of court dockets.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; POWER OF SUBORDINATE LEGISLATION; ADMINISTRATIVE BODIES MAY IMPLEMENT THE BROAD POLICIES LAID DOWN IN A STATUTE BY "FILLING IN" THE DETAILS WHICH THE CONGRESS MAY NOT HAVE THE OPPORTUNITY OR COMPETENCE TO PROVIDE. —** The three powers of

government—executive, legislative, and judicial—have been generally viewed as non-delegable. However, in recognition of the exigencies that contemporary governance must address, our legal system has recognized the validity of "subordinate legislation," or the rule-making power of agencies tasked with the administration of government. In *Eastern Shipping Lines v. Philippine Overseas Employment Administration*: x x x. The reasons given x x x for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation." With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.

4. **ID.; ID.; ID.; ID.; COMPLETENESS TEST AND SUFFICIENT STANDARD TEST; IN ORDER THAT THE EXERCISE OF THE POWER OF SUBORDINATE LEGISLATION MAY BE CONSIDERED VALID, IT IS REQUIRED THAT THE REGULATION BE GERMANE TO THE OBJECTS AND PURPOSES OF THE LAW AND THAT THE REGULATION BE NOT IN CONTRADICTION TO, BUT IN CONFORMITY WITH, THE STANDARDS PRESCRIBED BY THE LAW. —** Administrative agencies, however, are not given unfettered power to promulgate rules. As noted in *Gerochi v. Department of Energy*, two requisites must be satisfied in order that rules issued by administrative agencies may be considered valid: the completeness test and the sufficient standard test: In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies – the principal agencies tasked

to execute laws in their specialized fields – the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. *All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the* ***completeness test*** *and the* ***sufficient standard test.***

5. **ID.; ID.; ID.; ADMINISTRATIVE CODE OF 1987; RULES ADOPTED BY ADMINISTRATIVE AGENCIES MUST BE FILED WITH THE UNIVERSITY OF THE PHILIPPINES LAW CENTER, WHICH BECOME EFFECTIVE 15 DAYS AFTER FILING.—** In addition to the substantive requisites of the completeness test and the sufficient standard test, the Administrative Code of 1987 (Administrative Code) requires the filing of rules adopted by administrative agencies with the University of the Philippines Law Center. Generally, rules filed with the University of the Philippines Law Center become effective 15 days after filing.

6. **ID.; ID.; ID.; RULE-MAKING POWER OF THE SECRETARY OF EDUCATION. —** The Education Act of 1982 vested in the then Ministry of Education, Culture and Sports "[t]he administration of the education system and . . . the supervision and regulation of educational institutions." Section 70 of the Education Act of 1982 vested rule-making authority in the Minister of Education who, under Section 55 of the same statute, was the head of the Ministry: Section 70. Rule-making Authority. — The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations. Apart from the Education Act of 1982, Book IV, Chapter 2 of the Administrative Code provides for the rule-making power of the secretaries heading the departments that comprise the executive branch of government.

7. **ID.; ID.; ID.; DEPARTMENT OF EDUCATION'S DEPARTMENT ORDER NO. 54, SERIES OF 2009 (DO 54) ENTITLED REVISED GUIDELINES GOVERNING PARENTS-TEACHERS ASSOCIATIONS AT THE SCHOOL LEVEL; SCOPE AND PURPOSE.—** It was pursuant to this rule-making authority that Former Secretary of Education Jesli

A. Lapus promulgated Department Order No. 54, Series of 2009. As its title denotes, the Department Order provided revised guidelines governing PTAs at the school-level. The Department Order does not exist in a vacuum. As underscored by the Department of Education, the Department Order was issued "in response to increasing reports of malpractices by officers or members of PTAs." x x x. The Department Order provides measures "to ensure transparency and accountability in the safekeeping and utilization of funds[.] . . . x x x. [A]rticle VIII (on financial matters) of the Department Order provides for a detailed policy and conditions on collections of contributions, safekeeping of funds, financial reporting, and other measures for transparency and accountability x x x. Article IX of the Department Order's details the acts and practices in which PTAs are prohibited from engaging. It also stipulates the cancellation of a PTA's recognition as a consequence of engaging in prohibited activities x x x.

8. **ID.; ID.; ID.; ID.; THE PARENTS-TEACHERS COMMUNITY ASSOCIATIONS (PTCAs) DO NOT STAND ON THE SAME FOOTING AS PARENTS-TEACHERS ASSOCIATIONS (PTAs) AND THEIR EXISTENCE IS NOT STATUTORILY MANDATED. —** Neither Republic Act No. 9155 nor Republic Act No. 8980 supports petitioner's contentions that PTCAs should stand on the same footing as PTAs and that their existence is statutorily mandated. Republic Act No. 9155 does not even mention or otherwise refer to PTCAs. All it does is exhort that the interest of all members of the community should be taken into account in the administration of the country's basic education system. The Department Order does not run afoul of this. On the contrary, the Department Order specifically provides for PTAs' collaboration with members of the community x x x. Republic Act No. 8980 does mention PTCAs, but this is only in the specific context of the National Early Childhood Care and Development (ECCD) System. The ECCD System "refers to the full range of . . . programs that provide for the basic holistic needs of young children ***from birth to age six (6)*.**" It is not even an education program and does not involve the age range of students—elementary to high school—that is relevant to the Department Order. In any case, an isolated and passing mention does not equate to a mandate.

9. **ID.; ID.; ID.; DO 54 ENSURES THAT PARENTS-TEACHERS ASSOCIATIONS (PTAs) EXIST AND FUNCTION IN A MANNER THAT REMAINS CONSISTENT WITH THE ARTICULATED PURPOSES OF PTAs UNDER THE CHILD AND YOUTH WELFARE CODE AND THE EDUCATION ACT OF 1982.—** By ensuring fiscal transparency and accountability, and by providing the basic framework for organization and official recognition, the Department Order ensures that PTAs exist and function in a manner that remains consistent with the articulated purposes of PTAs under the Child and Youth Welfare Code and the Education Act of 1982. A framework for organization ensures that PTAs are properly organized and are both adequately representative of and limited only to those interests that are appropriate to the education of children in elementary and high school. Measures for fiscal transparency and accountability ensure that PTAs are not hampered by pecuniary or proprietary interests that have nothing to do with the effective implementation of school programs. Finally, mechanisms for official recognition ensure that only those associations that organize and conduct themselves in a manner that is consistent with these purposes are privileged with state sanction.

10. **ID.; ID.; ID.; NOTICE AND HEARING ARE NOT ESSENTIAL WHEN AN ADMINISTRATIVE AGENCY ACTS PURSUANT TO ITS RULE-MAKING POWER.—** Notice and hearing are not essential when an administrative agency acts pursuant to its rule-making power. In *Central Bank of the Philippines v. Cloribel*: Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. It is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise[:] x x x.

11. **ID.; ID.; ID.; NON-PUBLICATION DOES NOT INVALIDATE DO 54.—** Apart from claiming that no consultations were held, petitioner decries the non-publication, by the Department of Education itself, of the assailed Department Order. This does not invalidate the Department Order. As is evident from the x x x provisions of Book VII, Chapter 2 of the Administrative

Code, all that is required for the validity of rules promulgated by administrative agencies is the filing of three (3) certified copies with the University of the Philippine Law Center. Within 15 days of filing administrative rules become effective.

12. **ID.; ID.; ID.; THE INVOLVEMENT OF SCHOOL HEADS IS LIMITED TO THE INITIAL STAGES OF FORMATION OF PTAs, FOR ONCE ORGANIZED, THE SCHOOL HEADS HOLD NO POWER OVER PTAs AS THEY ARE LIMITED TO ACTING IN AN ADVISORY CAPACITY.—** [T]he organizing of PTAs is mandated by statute. Under Article 77 of the Child and Youth Welfare Code, every elementary school and high school is *required* to have a PTA. School heads are bound by this requirement. Moreover, the mandatory nature of organizing PTAs is recognized by the assailed Department Order itself. Article I(1) of the Department Order provides that "[e]very elementary and secondary school *shall* organize a Parents-Teachers Association." Likewise, Article I of the assailed Department Order echoes the Child and Youth Welfare Code and the Education Act of 1982 in providing for the purposes and functions of PTAs. In doing so, it lays out the standards that are to guide school heads in deciding on whether official sanction shall be vested in a group seeking recognition as a PTA x x x. The involvement of school heads is limited to the initial stages of formation of PTAs. Once organized, the school heads hold no power over PTAs as they are limited to acting in an advisory capacity.

13. **ID.; ID.; ID.; DO 54 SPECIFICALLY LIMITS A SCHOOL HEAD'S COMPETENCE TO RECOMMEND CANCELLATION OF RECOGNITION TO THE INSTANCES DEFINED BY ARTICLE IX THEREOF AS PROHIBITED ACTIVITIES.—** Petitioner makes much of how "the assailed Department Order provides that the recognition of the PTCA or any PTA shall be cancelled by the Division PTA Affairs Committee upon the mere recommendation of the School Head. And in case of cancellation of the recognition of the PTA, the School Head is given the power the [sic] call a special election to replace the Board of Directors of the PTA whose recognition was cancelled." It claims that this buttresses its claim that the Department Order 2009 undermines the organizational independence of PTAs. In the first place, all that a school head has is recommending authority. More

importantly, petitioner overlooks the qualifier to the school head's recommending authority: IX. Prohibited Activities and Sanctions . . . 5. The recognition of any PTA shall be cancelled by the Division PTA Affairs Committee upon recommendation of the School Head concerned *for any violation of the above-mentioned prohibited activities and these Guidelines*. x x x. It is evident that the recommending authority of the school head is not as "unbridled" as petitioner claims it to be. On the contrary, the assailed Department Order specifically limits a school head's competence to recommend cancellation of recognition to the instances defined by Article IX as prohibited activities.

14. **ID.; ID.; ID.; IN PURSUIT OF PUBLIC INTEREST, THE STATE CAN SET REASONABLE REGULATIONS—PROCEDURAL, FORMAL, AND SUBSTANTIVE—WITH WHICH ORGANIZATIONS SEEKING STATE IMPRIMATUR MUST COMPLY.—** The right to organize does not equate to the state's obligation to accord official status to every single association that comes into existence. It is one thing for individuals to galvanize themselves as a collective, but it is another for the group that they formed to not only be formally recognized by the state, but also bedecked with all the benefits and privileges that are attendant to official status. In pursuit of public interest, the state can set reasonable regulations—procedural, formal, and substantive—with which organizations seeking state imprimatur must comply. x x x. A parent-teacher association is a mechanism for effecting the role of parents (who would otherwise be viewed as outsiders) as an indispensable element of educational communities. Rather than being totally independent of or removed from schools, a parent-teacher association is more aptly considered an adjunct of an educational community having a particular school as its locus. It is an "arm" of the school. Given this view, the importance of regulation *vis-à-vis* investiture of official status becomes manifest. According a parent-teacher association official status not only enables it to avail itself of benefits and privileges but also establishes upon it its solemn duty as a pillar of the educational system.

BRION, *J., dissenting opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; DEPARTMENT OF EDUCATION; WHAT**

MAKES AN ORGANIZATION A PARENT-TEACHER ASSOCIATION IS ITS OBJECTIVE AND COMPOSITION, AND NOT ITS APPELLATION.— A Parent-Teacher Association is one whose purpose is to provide a forum for the discussion of problems and solutions relating to the total school program, and ensure that parents and teachers fully cooperate in the efficient implementation of such program. It may be organized by the parents themselves, or by the parents with the teachers. An association that meets these criteria is a PTA in the eyes of the law. *Hence, what makes an organization a Parent-Teacher Association is its objective and composition, and not its appellation.*

2. **ID.; ID.; ID.; ID.; PARENTS-TEACHERS COMMUNITY ASSOCIATIONS (PTCAs) STAND ON EQUAL FOOTING WITH PARENTS-TEACHERS ASSOCIATIONS (PTAs); THUS, THE DISTINCTION CREATED BETWEEN PTCAs AND PTAs IS INSIGNIFICANT AND LACKS MATERIALITY.—** [T]he *ponencia* discriminated against the petitioner QC PTCA when it assumed that the latter is not a Parent-Teacher Association without distinguishing PTAs from PTCA, and without discussing QC PTCA's distinct circumstances that would distinguish it from a PTA. Contrary to the *ponencia's* observations, no less than the respondent recognized that PTCAs stand on equal footing with PTAs. On June 24, 2009, the DepEd issued Department Order No. 67, s. 2009 (DO 67) clarifying DO 54. It reads x x x. **X. Transitory Provision <u>Existing PTCAs, whether SEC-registered or not, may conform to</u> <u>these Guidelines effective School Year 2009-2010 in order to be</u> <u>recognized as the duly constituted PTAs</u> x x x.** Thus, the distinction between PTCAs and PTAs is more imagined than real, particularly for PTCAs already in existence since they can be recognized as PTAs. Thus, x x x it [is] misplaced to generalize and discriminate against **all PTCAs** simply because the law only mentions "Parent Teachers Associations." [F]or purposes of this case, *the distinction the ponencia creates between PTAs and PTCAs is insignificant and lacks materiality.*

3. **ID.; ID.; ID.; POWER OF SUBORDINATE LEGISLATION; ADMINISTRATIVE AGENCIES MAY PROMULGATE SUPPLEMENTARY REGULATIONS WHICH HAVE THE FORCE AND EFFECT OF LAW. —** Delegation of powers

is a rule that is widely recognized especially in the legislative branch of government. With the increasing complexity of the government's functions and the growing inability of the legislature to address the myriad of problems demanding its attention, Congress found it necessary to delegate its powers to administrative agencies. This is the power of **subordinate legislation**. "With this power, administrative bodies may implement the broad policies laid down in a statute by 'filling in' the details which the Congress may not have the opportunity or competence to provide." On this basis, administrative agencies may promulgate supplementary regulations which have the force and effect of law. In the DepEd's case, its rule-making power finds its legislative basis in Section 57 of BP 232. Under this provision, the DepEd has the authority to "**promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system <u>in accordance with</u> <u>declared policy</u>**." Moreover, Section 70 of this law, in relation to EO 117 and RA 9155, expressly grants the DepEd Secretary the authority to administer and enforce BP 232 and to promulgate its necessary implementing rules and regulations.

4. **ID.; ID.; ID.; ID.; BOTH THE COMPLETENESS TEST AND THE SUFFICIENT STANDARD TEST MUST BE COMPLIED WITH IN ORDER FOR A VALID DELEGATION OF LEGISLATIVE POWERS TO EXIST. —** [T]he power of subordinate legislation does not mean the absolute transmission of legislative powers to administrative agencies such as the DepEd. In order for a valid delegation to exist, two basic tests must be complied with: the **completeness test**, and the **sufficient standard test**. "Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature, such that, when it reaches the delegate, the only thing he would have to do is enforce it. On the other hand, under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. These two tests are both intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative." Also, these two tests ensure that administrative agencies, in the exercise of their power of subordinate legislation, create rules and regulations that are

germane to the objects and purposes of the law they implement; and are not in contradiction, but in full conformity with the standards prescribed by this law.

5. **ID.; ID.; ID.; ID.; THE RULES AND REGULATIONS THAT ADMINISTRATIVE AGENCIES PROMULGATE SHOULD NOT BE *ULTRA VIRES* OR BEYOND THE LIMITS OF THE AUTHORITY CONFERRED TO THEM; DEPARTMENT OF EDUCATION'S DEPARTMENT ORDER NO. 54, (DO 54) SERIES OF 2009 (REVISED GUIDELINES GOVERNING PARENTS-TEACHERS ASSOCIATIONS AT THE SCHOOL LEVEL) WHICH GRANTS TO THE SCHOOL HEADS THE POWER TO APPROVE OR DISAPPROVE THE ORGANIZATION OF A PTA IS INVALID, AS IT IS CONTRARY TO LAW AND TO THE STATE POLICY ON THE CREATION OF PTAs.— DO 54 is invalid insofar as it grants to the school heads the power to approve or disapprove the organization of a PTA**. x x x. [T]he approval requirement is contrary to the law and to the state policy on the creation of PTAs, and transgresses the prohibition on further delegation of delegated powers. The authority of administrative agencies to create rules and regulations such as DO 54 **is not an absolute authority**. This is limited by the express legislative purpose of the law it implements, the standards set out in this law, and the express wording of the provisions of the law. The rules and regulations that administrative agencies promulgate should not be *ultra vires* or beyond the limits of the authority conferred to them.

6. **ID; ID.; ID.; ID.; ADMINISTRATIVE AGENCIES, IN THE EXERCISE OF THEIR POWER OF SUBORDINATE LEGISLATION, SHOULD NOT ENLARGE, ALTER, OR RESTRICT THE PROVISIONS OF THE LAW IT ADMINISTERS AND ENFORCES, AND SHOULD NOT ENGRAFT ADDITIONAL NON-CONTRADICTORY REQUIREMENTS THAT THE CONGRESS DID NOT CONTEMPLATE; DO 54 IS NOT ONLY CONTRARY TO THE RIGHTS OF PARENTS TO ORGANIZE AND INVOLVE THEMSELVES IN SCHOOL PROGRAMS AND MATTERS AFFECTING THEIR CHILDREN BUT IT ALSO CONTRAVENES THE DECLARED POLICY OF THE STATE.**— [I]t is a settled rule that administrative agencies, in the exercise of their power of subordinate legislation,

should not enlarge, alter, or restrict the provisions of the law it administers and enforces, and should not engraft additional non-contradictory requirements that the Congress did not contemplate. Thus, in formulating rules and regulations, administrative agencies should not amend, supplant, or modify the law which breathes life to it. x x x. The provisions of BP 232 and PD 603 emphasize the **clear mandate** of schools to form their own PTAs consistent with the rights of parents to be informed of the school programs affecting their children, and to participate in the formulation and implementation of these programs. Section 8 of BP 232 even went one step further when it provided that the parents may organize **by themselves** when taking part in school matters that affect their children. In other words, the parents, **even without the school's involvement,** may organize and coordinate among themselves in exercising their right to a meaningful and proactive participation in the school programs concerning their children's welfare. x x x. [D]O 54 lessens the chances, if not totally precludes the organization of the PTA by granting the school head the sole power to determine and approve its organization. Moreover, the approval requirement is not only contrary to the rights of parents to organize and involve themselves in school programs and matters affecting their children; ***it also contravenes the declared policy of the State,*** as enunciated in Section 3 of BP 232, which is to establish a complete, adequate, and integrated education system that would contribute to the achievement of an accelerating rate of economic development and social progress, and would ensure the "**maximum participation of all the people in the attainment** and enjoyment of the benefits of such growth."

7. **ID.; ID.; ID.; ID.; A DELEGATED POWER IS NOT ONLY A RIGHT BUT A DUTY THAT THE DELEGATE MUST PERFORM THROUGH THE INSTRUMENTALITY OF HIS OWN JUDGMENT AND NOT THROUGH THE INTERVENING MIND OF ANOTHER; DO 54 DID NOT SPECIFY THE PROCEDURE OR THE GUIDELINES THAT THE SCHOOL HEADS MUST OBSERVE IN DECIDING WHETHER TO APPROVE THE ORGANIZATION OF PTAs.—** The general rule is that "what has been delegated may not be delegated." This is based on the ethical principle that a delegated power is not only a right but a duty that the delegate must perform through the

instrumentality of his own judgment and not through the intervening mind of another. This is embodied in the Latin maxim, *potestas delegata non delegari potest*. ***The power to approve or disapprove PTAs is not a perfunctory or mechanical act but requires the exercise of the school head's discretion. Notably, however, DO 54 did not specify the procedure or the guidelines that the school heads must observe in deciding whether to approve the organization of a PTA.*** x x x. The danger in a broad grant of discretion is neither unlikely nor remote.

8. **ID.; ID.; ID.; ID.; ; WHAT HAS BEEN DELEGATED MAY NOT BE DELEGATED; THE SCHOOL HEADS SHOULD NOT BE ALLOWED TO DETERMINE THEIR OWN PROCEDURE AND GUIDELINES IN APPROVING OR DISAPPROVING THE ORGANIZATION OF A PTA.**— DO 54 gives the school heads a very broad, if not, an unbridled discretion in the formation of the PTAs. By failing to provide the guidelines or even outline the rules that must be considered in approving or disapproving PTAs, DO 54, in effect, grants the school heads the authority to create their own rules and to substitute their discretion in place of the DepEd. [T]he DepEd through BP 232, received from Congress not only the power to regulate but also the power to formulate rules that would implement BP 232's mandate. **This authority belongs solely to the DepEd** as the only recipient of the Congress' delegated powers under BP 232. When the DepEd, through DO 54, passed on to the school heads the power to approve or disapprove the organization of the PTAs, thus effectively devolving its regulatory powers to these persons, the DepEd violated the administrative rule of nondelegation of delegated powers. To repeat, "what has been delegated may not be delegated." There is no express provision in law granting the DepEd the power to further delegate its regulatory and rule-making powers, particularly to the school heads. The authority to issue rules that would affect the PTAs rests only with the DepEd. *On this basis, the school heads should not be allowed to determine their own procedure and guidelines in approving or disapproving the organization of a PTA.*

9. **ID.; ID.; ID.; ID.; IF THE IMPLEMENTING RULES AND REGULATIONS (IRRs) ARE SHOWN TO BEAR NO REASONABLE RELATION TO THE PURPOSES FOR WHICH THEY WERE AUTHORIZED TO BE ISSUED,**

THEY MUST BE HELD TO BE INVALID AND SHOULD BE STRUCK DOWN; THE APPROVAL REQUIREMENT PURSUANT TO DO 54 IS UNREASONABLE SINCE IT HAS NO RELATION TO THE MISMANAGEMENT OF PTA FUNDS, AND UNDULY RESTRICTS THE ORGANIZATION OF THE PTA EVEN BEFORE ANY IRREGULARITY HAS ARISEN.— To be valid, implementing rules and regulations (*IRRs*) must be reasonable. Administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. *If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down. DO 54 was issued primarily to address the problem of mismanagement of the PTA funds by its members and officers*. Unfortunately, the school head approval requirement does not address this problem. The school heads' approval comes at the PTA's inception, *i.e.,* even before the PTA is established and becomes operational. At that point, the members of the proposed PTA have yet to perform any act, much less, handle PTA funds. On the other hand, mismanagement only happens when the PTA is already organized, and not during its inception. There are no funds to be handled when the PTA is yet to be formed. In this sense, the approval requirement is unreasonable since it has no relation to the mismanagement of PTA funds, and unduly restricts the organization of the PTAs even before any irregularity has arisen.

APPEARANCES OF COUNSEL

Teddy Esteban F. Rigoroso & *Roderick R. Rabino* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Certiorari and Prohibition[1] praying that respondent Department of Education's Department Order No. 54, Series of 2009 (Department Order) be nullified for being unconstitutional and contrary to law, and that a writ of prohibition permanently enjoining the Department of Education and all persons acting on its behalf from enforcing the assailed Department Order be issued.[2]

The Petition also prays that, in the interim, a temporary restraining order and/or writ of preliminary injunction be issued, restraining the enforcement of the Department Order.

On June 1, 2009, the Department of Education, through Former Secretary Jesli A. Lapus, issued Department Order No. 54, Series of 2009[3] entitled Revised Guidelines Governing Parents-Teachers Associations (PTAs) at the School Level.

The Department of Education explained the reasons for the issuance of the Department Order as follows:

> The Department Order sought to address the limitations of the guidelines set forth in D.O. No. 23, s. 2003 and was issued in response to increasing reports of malpractices by officers or members of PTAs, such as, but not limited to (1) officers absconding with contributions and membership fees; (2) non-disclosure of the status of funds and non-submission of financial statements; and (3) misuse of funds.[4] (Citations omitted)

The Department Order is divided into 11 articles: (I) General Policy;[5] (II) Organization of PTAs at the School Level;[6]

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[1] The Petition was filed under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 7-24.

[3] *Id*. at 25-33.

[4] *Id*. at 142, Respondent's Memorandum.

[5] *Id*. at 25.

[6] *Id*. at 26.

(III) General Assembly;[7] (IV) Board of Directors and Officers;[8] (V) Recognition and Monitoring of PTAs;[9] (VI) Privileges of Recognized PTAs;[10] (VII) Activities;[11] (VIII) Financial Matters;[12] (IX) Prohibited Activities and Sanctions;[13] (X) Transitory Provision;[14] and (XI) Repealing Clause.[15]

More specifically, the Department Order provides for:

(1) The approval of the school head as a prerequisite for PTAs to be organized:

> II. Organization of PTAs at the School Level
>
> . . . .
>
> 2. Within fifteen (15) days from the start of the school year the Homeroom Adviser and the Parents/Guardians shall organize the Homeroom PTA with the approval of the School Head.[16]

(2) The terms of office and manner of election of a PTA's board of directors:

> II. Organization of PTAs at the School Level
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> . . . .
>
> 3. The elected presidents of the Homeroom PTAs and their respective Homeroom Advisers shall elect the Board of Directors within thirty (30) days from the

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[7] *Id*. at 26-27.

[8] *Id*. at 27-28.

[9] *Id*. at 28-29.

[10] *Id*. at 29.

[11] *Id*. at 30.

[12] *Id*. at 30-32.

[13] *Id*. at 32-33.

[14] *Id*. at 33.

[15] *Id*.

[16] *Id*. at 26.

start of the school year. The Board of Directors shall immediately elect from among themselves the executive officers of the PTA on the same day of their election to the Board.[17]

. . . .

IV. Board of Directors and Officers

1. The administration of the affairs and management of activities of the PTA is vested [in] the Board of Directors and its officers in accordance with these guidelines or their respective Constitution and By-Laws, if any, which shall adhere to the following:

. . . .

e. The term of office of the Board of Directors and its Officers shall be one (1) year from the date of election. In no case shall a PTA Board Director serve for more than two (2) consecutive terms;[18]

(3) The cessation of recognition of existing parents-teachers community associations (PTCAs) and of their federations effective school year 2009-2010. The Department Order gave them until June 30, 2009 to dissolve, wind up their activities, submit financial reports, and turn over all documents to school heads and schools division superintendents:

X. Transitory Provision

Existing and duly recognized PTCAs and its [sic] Federations shall no longer be given recognition effective School Year 2009-2010. They shall cease operation at the end of School Year 2008-2009 and given until June 30, 2009 to dissolve, wind up their activities, submit their financial reports and turn-over all documents to the School Heads and Schools Division Superintendents, respectively.[19]

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[17] *Id*.

[18] *Id*. at 27.

[19] *Id*. at 33.

Petitioner Quezon City PTCA Federation filed the present Petition in the belief that the above-quoted provisions undermine the independence of PTAs and PTCAs, effectively amend the constitutions and by-laws of existing PTAs and PTCAs, and violate its constitutional rights to organize and to due process, as well as other existing laws.[20]

On November 17, 2009, the Department of Education filed its Comment,[21] and on February 9, 2010, Quezon City PTCA Federation filed its Reply.[22]

In the Resolution[23] dated January 8, 2013, this court gave due course to the Petition and required the parties to submit their memoranda. Quezon City PTCA Federation complied on March 22, 2013,[24] and the Department of Education on May 15, 2013.[25]

For resolution is the central issue of whether the Department of Education acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Department Order No. 54, Series of 2009. Subsumed under this issue are:

First, whether the issuance of the Department Order was a valid exercise of the Department of Education's rule-making powers:

(a) Whether the Department Order contravenes any of the laws providing for the creation and organization of parent-teacher associations;

(b) Whether Department Order is invalid and ineffective as no public consultations were (supposedly) held before

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[20] *Id*. at 7-24.

[21] *Id*. at 53-79.

[22] *Id*. at 104-109.

[23] *Id*. at 116.

[24] *Id*. at 121-135.

[25] *Id*. at 141-160.

its adoption, and/or as it was not published by the Department of Education; and

Second, whether the assailed provisions of the Department Order (i.e., Article II (2) and (3), Article IV (1)(e), and Article X undermine the organizational independence of parent-teacher associations.

Apart from these, the Department of Education assails the filing of this Petition as being violative of the principle of hierarchy of courts.

We sustain the position of the Department of Education. The present Petition was filed in violation of the principle of hierarchy of courts. Department Order No. 54, Series of 2009 was validly issued by the Secretary of Education pursuant to his statutorily vested rule-making power and pursuant to the purposes for which the organization of parent-teacher associations is mandated by statute. Likewise, there was no fatal procedural lapse in the adoption of Department Order No. 54, Series of 2009.

I

The Department of Education correctly points out that the present Petition was filed in violation of the principle of hierarchy of courts. On this score alone, the Petition should be dismissed.

It is true that petitions for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure fall under the original jurisdiction of this court. However, this is also true of regional trial courts and the Court of Appeals.

"[T]his Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of certiorari."[26] Indeed, "concurrence [of jurisdiction] does not allow unrestricted freedom of choice of the court forum. A direct invocation of the Supreme Court's original jurisdiction to issue this writ should be allowed only when there are special

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[26] *First United Constructors Corporation v. Poro Point Management Corporation*, 596 Phil. 334, 342 (2009) [Per *J.* Nachura, Third Division].

and important reasons, clearly and specifically set out in the petition."[27]

In *Vergara v. Suelto*:[28]

> The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[29]

Petitioner argues that the present Petition justifies direct recourse to this court "considering the pervasive effect of the assailed Department Order to all the different PTCAs or PTAs across the country and in order to avoid multiple suits that would only serve to further clog the court's dockets."[30]

This reason fails to impress.

That the effects of the Department Order extend throughout the country is a concern that can be addressed by recourse to the Court of Appeals. Its territorial jurisdiction, much like this court's, also extends throughout the country. Moreover, the Court of Appeals is well-equipped to render reliable, reasonable, and

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[27] *Id.*, citing *Page-Tenorio v. Tenorio*, 486 Phil. 160 (2004) [Per *J.* Chico-Nazario, Second Division].

[28] 240 Phil. 719 (1987) [Per *J.* Narvasa, First Division].

[29] *Id*. at 732-733.

[30] *Rollo*, p. 9.

well-grounded judgments in cases averring grave abuse of discretion amounting to lack or excess of jurisdiction. Recourse to the Court of Appeals is not a futile exercise that results to nothing more than the clogging of court dockets.

II

Citing Article III, Section 8,[31] Article II, Section 23,[32] and Article XIII, Sections 15[33] and 16[34] of the 1987 Constitution, petitioner asserts that PTCAs are "independent voluntary organization[s]"[35] "enjoying constitutional protection."[36]

It adds that, pursuant to Section 8(1)[37] of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982, and

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[31] CONST, Art. III, Sec. 8 provides:

SECTION 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

[32] CONST, Art. II, Sec. 23 provides:

SECTION 23. The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.

[33] CONST, Art. XIII, Sec. 15 provides:

SECTION 15. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People's organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

[34] CONST, Art. XIII, Sec. 16 provides:

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

[35] *Rollo*, p. 124, Petitioner's Memorandum.

[36] *Id*. at 125.

[37] Batas Blg. 232 (1982), Sec. 8 provides:

Section 8. Rights of Parents. – In addition to other rights under existing laws, all parents who have children enrolled in a school have the following rights:

Article 77[38] of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, the PTCA "promotes and protects the welfare of . . . students all over the country and . . . serve[s] as a forum for parents and the community to have an active role in the efficient implementation of the . . . programs of the school [sic]."[39]

Petitioner assails the Department Order as an inordinate exercise of the Department of Education's rule-making power. It claims that the Department Order contradicts the provisions of the Education Act of 1982 and of the Child and Youth Welfare Code, the statutes that provide for the creation of PTAs. It also alleges that the Department Order was issued without prior consultation and publication, contrary to the requirements for regulations issued by administrative agencies.

Noting that the Department Order lends recognition only to PTAs and not to PTCAs, petitioner assails the Department Order as being contrary to the purposes of Republic Act No. 9155,[40]

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1. The right to organize by themselves and/or with teachers for the purpose of providing a forum for the discussion of matters relating to the total school program, and for ensuring the full cooperation of parents and teachers in the formulation and efficient implementation of such programs.

[38] CHILD & YOUTH WELFARE CODE, Art. 77 provides:

Article 77. Parent-Teacher Associations. – Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

[39] *Rollo*, pp. 124-125.

[40] Rep. Act No. 9155 (2001), Sec. 3(d) provides:

Section 3. Purposes and Objectives. – The purposes and objectives of this Act are:

otherwise known as the Governance of Basic Education Act of 2001, and of Republic Act No. 8980,[41] otherwise known as the Early Childhood Care and Development Act.

. . . .

(d) To ensure that schools and learning centers receive the kind of focused attention they deserve and that educational programs, projects and services ***take into account the interests of all members of the community***[.]

[41] Rep. Act No. 8980 (2000), Sec. 7 provides:

Section 7. Implementing Arrangements and Operational Structures. – The implementation of the National ECCD System shall be the joint responsibility of the national government agencies, local government units, nongovernment organizations, and private organizations that are accredited to deliver the services or to provide training and technical assistance.

(a) Responsibilities of the National Government - National government agencies shall be responsible for developing policies and programs, providing technical assistance and support to the ECCD service providers in consultation with coordinating committees at the provincial, city/municipal, and barangay levels, as provided for in Section 8 of this Act, and monitoring of ECCD service benefits and outcomes. The Department of Social Welfare and Development (DSWD), the Department of Education, Culture and Sports (DECS), the Department of Health (DOH), the Department of the Interior and Local Government (DILG), the Department of Labor and Employment (DOLE), the Department of Agriculture (DA), the Department of Justice (DOJ), the National Economic and Development Authority (NEDA), and the National Nutrition Council (NNC) shall jointIy prepare annual ECCD for work plans that will coordinate their respective technical assistance and support for the National ECCD Program. They shall consolidate existing program implementing guidelines that ensure consistency in integrated service delivery within the National ECCD System.

(1) The DECS shall promote the National ECCD Program in schools. ECCD programs in public schools shall be under the joint responsibility of their respective school principal/school-head and ***parents-teachers-community association (PTCA)*** within the standards set forth in the National ECCD System and under the guidance of the City/ Municipal ECCD Coordinating Committee for the effective and equitable delivery of ECCD services. It shall also make available existing facilities of public elementary schools for ECCD classes.

(2) Public and private pre-schools shall be registered by the Provincial or City ECCD Coordinating Committee upon the recommendation of the

Petitioner further claims that Article II (2) of the Department Order, which provides for the organization of the Homeroom PTA *with the approval of the School Head*, infringes upon the independence of PTCAs and PTAs. It asserts that this provision gives "unbridled discretion [to the school head] to disapprove the organization of a PTA."[42] Petitioner likewise assails the Department Order's provisions on the terms of office of PTA officers as being violative of the right to due process.[43]

III

The three powers of government—executive, legislative, and judicial—have been generally viewed as non-delegable. However, in recognition of the exigencies that contemporary governance must address, our legal system has recognized the validity of "subordinate legislation," or the rule-making power of agencies tasked with the administration of government. In *Eastern Shipping Lines v. Philippine Overseas Employment Administration*:[44]

> The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This has led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.
>
> The reason is the increasing complexity of the task of government and the growing inability of the legislature to cope directly with

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respective division office of the DECS. NGO-initiated, community, church, home, and workplace-based service providers shall be registered upon the recommendation of the provincial/city social welfare and development office. These public and private ECCD service providers shall operate within the standards set forth in the National ECCD System and under the guidance of the City/Municipal ECCD Coordinating Committee for the effective delivery of ECCD services.

[42] *Rollo*, p. 126.

[43] *Id*. at 128.

[44] 248 Phil. 762 (1988) [Per *J.* Cruz, First Division].

the myriad problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."

With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.[45]

Administrative agencies, however, are not given unfettered power to promulgate rules. As noted in *Gerochi v. Department of Energy*,[46] two requisites must be satisfied in order that rules issued by administrative agencies may be considered valid: the completeness test and the sufficient standard test:

In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies – the principal agencies tasked to execute

[45] *Id*. at 772–773.

[46] 554 Phil. 563 (2007) [Per *J.* Nachura, *En Banc*].

laws in their specialized fields – the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. *All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the* ***completeness test*** *and the* ***sufficient standard test***.[47] (Emphasis supplied)

Further, in *ABAKADA GURO Party List v. Purisima*:[48]

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[49] (Citations omitted)

In addition to the substantive requisites of the completeness test and the sufficient standard test, the Administrative Code of 1987 (Administrative Code) requires the filing of rules adopted by administrative agencies with the University of the Philippines Law Center. Generally, rules filed with the University of the Philippines Law Center become effective 15 days after filing. Chapter 2 of Book VII of the Administrative Code provides:

CHAPTER 2
Rules and Regulations

SECTION 3. Filing.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date

[47] *Id*. at 584-585.

[48] 584 Phil. 246 (2008) [Per *J.* Corona, *En Banc*].

[49] *Id*. at 272.

shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

SECTION 4. Effectivity.—In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

SECTION 5. Publication and Recording.—The University of the Philippines Law Center shall:

(1) Publish a quarterly bulletin setting forth the text of rules filed with it during the preceding quarter; and

(2) Keep an up-to-date codification of all rules thus published and remaining in effect, together with a complete index and appropriate tables.

SECTION 6. Omission of Some Rules.— (1) The University of the Philippines Law Center may omit from the bulletin or the codification any rule if its publication would be unduly cumbersome, expensive or otherwise inexpedient, but copies of that rule shall be made available on application to the agency which adopted it, and the bulletin shall contain a notice stating the general subject matter of the omitted rule and new copies thereof may be obtained.

(2) Every rule establishing an offense or defining an act which, pursuant to law is punishable as a crime or subject to a penalty shall in all cases be published in full text.

SECTION 7. Distribution of Bulletin and Codified Rules.—The University of the Philippines Law Center shall furnish one (1) free copy each of every issue of the bulletin and of the codified rules or supplements to the Office of the President, Congress, all appellate

courts and the National Library. The bulletin and the codified rules shall be made available free of charge to such public officers or agencies as the Congress may select, and to other persons at a price sufficient to cover publication and mailing or distribution costs.

SECTION 8. Judicial Notice.—The court shall take judicial notice of the certified copy of each rule duly filed or as published in the bulletin or the codified rules.

SECTION 9. Public Participation.—(1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

IV

The Education Act of 1982 vested in the then Ministry of Education, Culture and Sports[50] "[t]he administration of the education system and . . . the supervision and regulation of educational institutions."[51] Section 70 of the Education Act of 1982 vested rule-making authority in the Minister of Education who, under Section 55[52] of the same statute, was the head of the Ministry:

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[50] The Ministry of Education, Culture and Sports was renamed as the Department of Education, or DepEd, through Rep. Act No. 9155.

[51] Batas Blg. 232 (1982), Sec. 54 provides:

Section 54. Declaration of Policy. – The administration of the education system and, pursuant to the provisions of the Constitution, the supervision and regulation of educational institutions are hereby vested in the Ministry of Education, Culture and Sports, without prejudice to the provisions of the charter of any state college and university.

[52] Batas Blg. 232 (1982), Sec. 55 provides:

Section 55. Organization. – The Ministry shall be headed by the Minister of Education, Culture and Sports who shall be assisted by one or more Deputy Ministers.

Section 70. Rule-making Authority. – The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

Apart from the Education Act of 1982, Book IV, Chapter 2 of the Administrative Code provides for the rule-making power of the secretaries heading the departments that comprise the executive branch of government:

SECTION 7. Powers and Functions of the Secretary.—The Secretary shall:

. . . .

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

V

It was pursuant to this rule-making authority that Former Secretary of Education Jesli A. Lapus promulgated Department Order No. 54, Series of 2009. As its title denotes, the Department Order provided revised guidelines governing PTAs at the school-level.

The organization of the Ministry shall consist of (a) the Ministry Proper composed of the immediate Office of the Minister, and the Services of the Ministry, (b) the Board of Higher Education, which is hereby established, (c) the Bureau of Elementary Education, the Bureau of Secondary Education, the Bureau of Higher Education, the Bureau of Technical and Vocational Education, and the Bureau of Continuing Education, which are hereby established, (d) Regional offices and field offices, (e) the National Scholarship Center and such other agencies as are now or may be established pursuant to law, and (f) the cultural agencies, namely: the National Library, the National Historical Institute, the National Museum, and the Institute of National Language. Such of the above offices as are created or authorized to be established under this provision, shall be organized and staffed and shall function, subject to the approval of the President, upon recommendation of the Minister of Education, Culture and Sports in consultation with the Presidential Commission on Reorganization.

The Department Order does not exist in a vacuum. As underscored by the Department of Education, the Department Order was issued "in response to increasing reports of malpractices by officers or members of PTAs."[53] Among these "malpractices" are those noted in a resolution adopted by the "Regional Education Supervisors in-charge of THE [sic] Student Government Program (SGP), selected Teachers-Advisers and the Officers of the National Federation of Supreme Student Governments (NFSSG)"[54] during a conference held from February 4 to 8, 2008. This same resolution formally sought to "review and [revise] the Guidelines Governing PTAs/PTCAs at the School Level as contained in DepED Order No. 23, s. 2003."[55] The malpractices noted were:

> PTA/PICA officers absconding with the [sic] contributions and membership fees;
>
> Non-remittance or turn-over of collected funds in the name of organizations such as SSG funds, STEP funds, School Publication fee and the like;
>
> Misuse of funds by re-channeling the amounts collected to other activities and projects not within the intended purpose;
>
> Non-deposit of funds in reputable banks;
>
> Non-disclosure of the status of the funds collected and non-submission of financial statements;
>
> Fraudulent disbursements of funds due to the absence of resolutions, vouchers and official receipts; and,
>
> Un-liquidated cash advances of PICA officers[.][56]

Thus, the Department Order rationalized the mechanism for the organizing and granting of official recognition to PTAs. Its first to seventh articles read:

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[53] *Rollo*, p. 144.

[54] *Id*. at 96.

[55] *Id*.

[56] *Id*. at 96-97.

I. General Policy

1. Every elementary and secondary school shall organize a Parents-Teachers Association (PTA) for the purpose of providing a forum for the discussion of issues and their solutions related to the total school program and to ensure the full cooperation of parents in the efficient implementation of such program.

   Every PTA shall provide mechanisms to ensure proper coordination with the members of the community, provide an avenue for discussing relevant concerns and provide assistance and support to the school for the promotion of their common interest. Standing committees may be created within the PTA organization to coordinate with community members. Regular fora may be conducted with local government units, civic organizations and other stakeholders to foster unity and cooperation.

2. As an organization operating in the school, the PTA shall adhere to all existing policies and implementing guidelines issued or hereinafter may be issued by the Department of Education.

   The PTA shall serve as support group and as a significant partner of the school whose relationship shall be defined by cooperative and open dialogue to promote the welfare of the students.

II. Organization of PTAs at the School Level

1. Membership in a PTA is limited to parents, or in their absence the guardian, of duly enrolled students, and teachers in a given school.

   For this purpose, a guardian is hereby defined as any of the following: a) an individual authorized by the biological parents to whom the care and custody of the student has been entrusted; b) a relative of the student within the fourth degree of consanguinity or affinity provided that said relative has the care and custody over the child; c) an individual appointed by a competent court as the legal guardian of the student; or d) in case of an orphan, the individual/institution who has the care and custody of the student.

A teacher-member refers to homeroom advisers, subject teachers, and non-teaching personnel.

2. Within fifteen (15) days from the start of the school year the Homeroom Adviser and the Parents/Guardians shall organize the Homeroom PTA with the approval of the School Head.

3. The elected presidents of the Homeroom PTAs and their respective Homeroom Advisers shall elect the Board of Directors within thirty (30) days from the start of the school year. The Board of Directors shall immediately elect from among themselves the executive officers of the PTA on the same day of their election to the Board.

4. The official name of the PTA shall bear the name of the school (example: Parents-Teachers Association of Rizal High School or Rizal High School Parents-Teachers Association).

5. For representation in the Local School Board and other purposes, the schools' PTAs within a municipality or city or province shall federate and select from among the elected Presidents their respective officers. The president-elect shall sit as representative of the Federation to the said Local School Board.

III. General Assembly

1. The General Assembly shall be composed of all parents of enrolled students of the school, Board of Directors and Officers of the PTA, School Head, Homeroom Advisers, Subject Teachers, and Non-Teaching Personnel.

2. The General Assembly shall be convened by the PTA Board of Directors immediately after the PTA has been organized. The General Assembly shall be convened as may be necessary but in no case less than twice a year. The Board shall coordinate with the School Head as to time, venue and other details of the General Assembly.

3. The General Assembly shall be a venue for presentation and discussion of the PTA's programs, projects, financial statements, reports and other matters.

4. The General Assembly may invite or consult with other members of the community such as local government officials and civic organizations to solicit their support or active participation in school activities.

IV. Board of Directors and Officers

1. The administration of the affairs and management of activities of the PTA is vested [in] the Board of Directors and its officers in accordance with these guidelines or their respective Constitution and By-Laws, if any, which shall adhere to the following:

a. The Board of Directors shall be composed of fifteen (15) members who shall elect from among themselves the association's executive officers; namely: President, Vice- President, Secretary, Treasurer, Auditor, or other equivalent positions, who shall oversee the day-to-day activities of the associations;

b. Parent-members shall comprise two-thirds ($^{2}/_{3}$) and teacher-members one-third ($^{1}/_{3}$) of the Board of Directors;

c. A teacher-member cannot hold any position in the PTA except as a member of the Board of Directors or as Secretary;

d. The School Head shall not serve as a member of the Board of Directors but as adviser to the PTA;

e. The term of office of the Board of Directors and its Officers shall be one (1) year from the date of election. In no case shall a PTA Board Director serve for more than two (2) consecutive terms;

f. In case of vacancy in the Board of Directors as a result of expulsion, resignation or death, the vacancy shall be filled, for the unexpired term of the office, by a majority vote of the Board of Directors from among the Presidents of Homeroom PTAs in a special meeting called for such purpose.

g. Among the committees that may be formed to handle specific activities of the PTAs are: a) Committee on Finance; b) Committee on Programs and Projects; c) Audit Committee; d) Election Committee; e) Grievance Committee; f) Ways and Means Committee; g) Committee on External and Community Affairs;

h. The heads of the committees shall preferably come from the Board of Directors, Homeroom Presidents and Homeroom Advisers; and

i. The PTA may or may not be incorporated with the Securities and Exchange Commission (SEC). If incorporated, the registered entity shall, as far as practicable, be used in the organization of the PTA by the elected Board of Directors. In any event, the formal notification by the elected Board of Directors outlined below and the issuance of the Certificate of Recognition by the School Head shall be the operative act to recognize the PTA.

V. Recognition and Monitoring of PTAs

1. There shall be only one PTA that will operate in a school which shall be recognized by the School Head upon formal notification in writing by the elected Board of Directors. The recognition shall be valid for one year from the date of election.

2. Together with the formal notification in writing, the elected Board of Directors shall submit Oaths of Office of the Board of Directors and Officers (Enclosure No. 1) including a list of directors and officers.

3. A Division PTA Affairs Committee shall be created in the Division Office to be composed of the following:

Chairperson - Schools Division Superintendent
Members - Assistant Schools Division Superintendent
Division Administrative Officer

Division Education Supervisor (In-Charge of PTA)
Division PESPA President (Elementary) or Division NAPSSHI President (Secondary)
President of the Division Federation of PTA
President of the Division Federation of SSG

4. The Division PTA Affairs Committee shall monitor the activities of the PTAs and their compliance with reports and other requirements, arbitrate disputes and settle matters that may be submitted to it for resolution especially on PTA representation issue.

VI. Privileges of Recognized PTAs

1. A PTA is authorized to collect voluntary contributions from parents/guardian-members once it has been duly recognized and given a Certificate of Recognition by the School Head (Enclosure No. 2). Such collections, however, shall be subject to pertinent issuances of the DepED and/or existing pertinent ordinances of the local government unit concerned, if any.

2. In addition, a duly recognized PTA shall have the following privileges:

a. The use of any available space within the school premises as its office or headquarters, provided, that costs pertinent to electricity, water and other utilities shall be for the account of the PTA; provided however, that should the school need such space, the PTA shall so vacate the space immediately. The maintenance and improvement of the office shall be in accordance with the School Improvement Plan.

The DepED may allow the PTA to construct a building or structure within the school premises for its office, provided however, that the PTA shall donate such building or structure and other permanent fixtures to the school. Any improvement made on such building,

structure or fixture that cannot be removed from such building or structure without causing damage thereto shall be deemed the property of the school. A written agreement shall be executed before the improvement or construction. A Deed of Donation shall also be executed by and between the PTA and the school immediately after the completion of the improvement or construction;

b. Representation in the School Governing Council;

c. Authorization to undertake fund-raising activities to support the school's academic and co-curricular programs, projects and activities subject to pertinent DepED guidelines;

d. Participation in the school's inspection and acceptance committee and as an observer in the school's procurement activities subject to the provisions of R.A. No. 9184; and

e. Collaboration in relevant school activities.

VII. Activities

All PTA activities within the school premises or which involve the school, its personnel or students shall be with prior consultation and approval of the School Head.[57]

Moreover, the Department Order provides measures "to ensure transparency and accountability in the safekeeping and utilization of funds[.] . . . [S]tringent measures were introduced to eliminate the increasing number of reported incidents wherein officers of PTAs take undue advantage of their positions."[58] Specifically, Article VIII (on financial matters) of the Department Order provides for a detailed policy and conditions on collections of contributions, safekeeping of funds, financial reporting, and other measures for transparency and accountability:

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[57] *Id*. at 25-30.

[58] *Id*. at 145.

VIII. Financial Matters

1. Policy on Collection of Contributions

Cognizant of the need of an organization for adequate funds to sustain its operations, a duly recognized PTA may collect voluntary financial contributions from members and outside sources to enable it to fund and sustain its operation and the implementation of its programs and projects exclusively for the benefit of the students and the school where it operates. The PTA's programs and projects shall be in line with the School Improvement Plan (SIP).

Such collections shall be made by the PTA subject to the following conditions:

a. The contributions should be a reasonable amount as may be determined by the PTA Board of Directors;

b. Non-payment of the contributions by the parent member shall not be a basis for non- admission or non-issuance of clearance(s) to the child by the school concerned;

c. The contributions shall be collected by the PTA Treasurer on a per parent-member basis regardless of the number of their children in school;

d. No collection of PTA contributions shall be done during the enrollment period; and

e. No teacher or any school personnel shall be involved in such collection activities.

If collection of the School Publications Fee, Supreme Student Government (SSG) Developmental Fund and other club membership fees and contributions is coursed through the PTA as requested by the concerned organization, the amount collected shall be remitted immediately to the school, SSG or other student organizations concerned on the day it was collected. The pertinent organization shall deposit the funds with a reputable bank on the next banking day under the

organization's account. No service fee shall be charged against any student organization by the PTA.

Non-compliance or any violation of the aforementioned conditions shall be a ground for the cancellation of the PTA's recognition and/or the filing of appropriate charges as the case may be.

2. Safekeeping of Funds

All collections of contributions or proceeds of fundraising activities shall be deposited in a reputable banking institution as determined by the Board of Directors. The PTA's Treasurer or a duly authorized representative shall undertake the collection and shall issue official receipts/acknowledgement receipts.

In no case shall any school official or personnel be entrusted with the safekeeping and disbursement of collections made by the PTA. All disbursements of funds shall be in accordance with generally accepted accounting and auditing rules and regulations.

All disbursements shall be accompanied by appropriate resolutions indicating thereof the purposes for which such disbursements are made.

No cash advances shall be allowed without valid liquidation of previous cash advances.

3. Financial Statement Report

The books of accounts and other financial records of the PTA shall be made available for inspection by the School Head and/or the Division PTA Affairs Committee at any time.

An Annual Financial Statement signed jointly by the PTA President, Treasurer and Auditor shall be submitted to the School Head not later than thirty (30) days after the last day of classes. Such financial statement shall be audited by an external and independent auditor, posted in the PTA Bulletin Board, and presented to the General Assembly during the next school year.

The PTA shall also submit to the School Head not later than November 30, a mid-school year financial

statement report ending October 30 duly audited and signed by the members of the PTA's audit committee.

Failure to submit such financial statement report shall be a ground for the cancellation of the recognition of the PTA by the Division PTA Affairs Committee upon the recommendation of the School Head.

4. Transparency and Accountability

For purposes of transparency and accountability, all documents pertaining to the operations of the PTA shall be open to public examination.

PTA[s] are required to install a PTA Bulletin Board outside of its office where announcements, approved resolutions, required reports and financial statements shall be posted.[59]

Article IX of the Department Order's details the acts and practices in which PTAs are prohibited from engaging. It also stipulates the cancellation of a PTA's recognition as a consequence of engaging in prohibited activities:

IX. Prohibited Activities and Sanctions

1. PTAs are prohibited from:

   a. Interfering in the academic and administrative management and operations of the school, and of the DepED, in general;

   b. Engaging in any partisan political activity within school premises;

   c. Operating a canteen/school supplies store, or being a concessionaire thereof inside the school or nearby premises, or offering these services to the school as its client either directly or indirectly;

   d. Selling insurance, pre-need plans or similar schemes or programs to students and/ or their parents; and

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[59] *Id*. at 30-32.

e. Such other acts or circumstances analogous to the foregoing.

2. PTA Officers and members of the Board of Directors are prohibited from collecting salaries, honoraria, emoluments or other forms of compensation from any of the funds collected or received by the PTA.

3. PTAs shall have no right to disburse, or charge any fees as service fees or percentages against the amount collected pertinent to the School Publication Fee, Supreme Student Government (SSG) Developmental Fund and other club membership fees and contributions.

4. In no case shall a PTA or any of its officers or members of the Board of Directors call upon students and teachers for purposes of investigation or disciplinary action.

5. The recognition of any PTA shall be cancelled by the Division PTA Affairs Committee upon the recommendation of the School Head concerned for any violation of the above-mentioned prohibited activities and these Guidelines.

   Thereafter, the School Head may call for a special election to replace the Board of Directors of the PTA whose recognition was cancelled. Criminal, civil and/or administrative actions may be taken against any member or officer of the Board of the PTA who may appear responsible for failure to submit the necessary annual financial statements or for failure to account the funds of the PTA.[60]

Consistent with rationalizing the mechanism for granting official recognition to PTAs, Article X of the Department Order provides for the following transitory provision:

X. Transitory Provision

Existing and duly recognized PTCAs and its Federations shall no longer be given recognition effective School Year 2009-2010. They shall cease operation at the end of School Year 2008-2009

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[60] *Id*. at 32-33.

and given until June 30, 2009 to dissolve, wind up their activities, submit their financial reports and turn-over all documents to the School Heads and Schools Division Superintendents, respectively.[61]

Petitioner insists that the Department Order is an invalid exercise of the rule-making power delegated to the Secretary of Education as it supposedly disregards PTAs' and PTCAs' purposes, not only as partners of the Department of Education in the implementation of programs, but also as a watchdog against "abuses, mismanagement, inefficiency[,] and excesses of public officials within the public school system."[62] Petitioner also assails the Department Order's limitation of official recognition to PTAs, and no longer to PTCAs, as being contrary to law.

VI

Petitioner is in error for asserting that the assailed Department Order is contrary to the statutes it aims to put into effect as it fails to put PTCAs on the same footing as PTAs.

Article 77 of the Child and Youth Welfare Code provides for the organization and purposes of PTAs:

Article 77. Parent-Teacher Associations. – Every elementary and secondary school shall organize a parent-teacher association *for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program*. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association[s] all over the country *shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare*. (Emphasis supplied)

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[61] *Id*. at 33.

[62] *Id*. at 125.

The Education Act of 1982, a statute adopted subsequent to the Child and Youth Welfare Code, expressly recognizes the right of parents to organize by themselves and/or with teachers:

> Section 8. Rights of Parents. – In addition to other rights under existing laws, all parents who have children enrolled in a school have the following rights:
>
> 1. The right to organize by themselves and/or with teachers *for the purpose of providing a forum for the discussion of matters relating to the total school program, and for ensuring the full cooperation of parents and teachers in the formulation and efficient implementation of such programs*.
> 2. The right to access to any official record directly relating to the children who are under their parental responsibility. (Emphasis supplied)

As is evident from the Child and Youth Welfare Code's use of the word "shall," it is mandatory for PTAs to be organized in elementary and secondary schools. As against this, the Child and Youth Welfare Code is silent on the creation of PTCAs. The Education Act of 1982 is equally silent on this. Hence, while the creation and/or organization of PTAs are statutorily mandated, the same could not be said of PTCAs.

However, petitioner argues differently. In support of its position, it cites Republic Act No. 9155, otherwise known as the Basic Education Act of 2001, more specifically its Section 3(d), on its purposes and objectives:

> Section 3. Purposes and Objectives. – The purposes and objectives of this Act are:
>
> . . . .
>
> (d) To ensure that schools and learning centers receive the kind of focused attention they deserve and that educational programs, projects and services take into account the interests of all members of the community[.]

Petitioner also cites Republic Act No. 8980, otherwise known as the Early Childhood Care and Development Act. More

specifically, petitioner cites Section 7(a)(1) on implementing arrangements and operational structures:

Sec. 7. *Implementing Arrangements and Operational Structures*. – The implementation of the National [Early Childhood Care and Development or] ECCD System shall be the joint responsibility of the national government agencies, local government units, nongovernment organizations, and private organizations that are accredited to deliver the services or to provide training and technical assistance.

(a) *Responsibilities of the National Government* – National government agencies shall be responsible for developing policies and programs, providing technical assistance and support to the ECCD service providers in consultation with coordinating committees at the provincial, city/municipal, and barangay levels, as provided for in Section 8 of this Act, and monitoring of ECCD service benefits and outcomes. The Department of Social Welfare and Development (DSWD), the Department of Education, Culture and Sports (DECS), the Department of Health (DOH), the Department of the Interior and Local Government (DILG), the Department of Labor and Employment (DOLE), the Department of Agriculture (DA), the Department of Justice (DOJ), the National Economic and Development Authority (NEDA), and the National Nutrition Council (NNC) shall jointly prepare annual ECCD for work plans that will coordinate their respective technical assistance and support for the National ECCD Program. They shall consolidate existing program implementing guidelines that ensure consistency in integrated service delivery within the National ECCD System.

(1) The DECS shall promote the National ECCD Progman in schools. ECCD programs in public schools shall be under the joint responsibility of their respective school principal/school-head and parents-teachers-community association (PTCA) within the standards set forth in the National ECCD System and under the guidance of the City/Municipal ECCD Coordinating Committee for the effective and equitable delivery of ECCD services. It shall also make available existing facilities of public elementary schools for ECCD classes.

Neither Republic Act No. 9155 nor Republic Act No. 8980 supports petitioner's contentions that PTCAs should stand on the same footing as PTAs and that their existence is statutorily mandated.

Republic Act No. 9155 does not even mention or otherwise refer to PTCAs. All it does is exhort that the interest of all members of the community should be taken into account in the administration of the country's basic education system. The Department Order does not run afoul of this. On the contrary, the Department Order specifically provides for PTAs' collaboration with members of the community:

> I. General Policy
>
> 1. Every elementary and secondary school shall organize a Parents-Teachers Association (PTA) for the purpose of providing a forum for the discussion of issues and their solutions related to the total school program and to ensure the full cooperation of parents in the efficient implementation of such program.
>
> *Every PTA shall provide mechanisms to ensure proper coordination with the members of the community*, provide an avenue for discussing relevant concerns and provide assistance and support to the school for the promotion of their common interest. Standing committees may be created within the PTA organization to coordinate with community members. Regular fora may be conducted with local government units, civic organizations and other stakeholders to foster unity and cooperation.[63] (Emphasis supplied)

Republic Act No. 8980 does mention PTCAs, but this is only in the specific context of the National Early Childhood Care and Development (ECCD) System. The ECCD System "refers to the full range of . . . programs that provide for the basic holistic needs of young children ***from birth to age six (6)***."[64]

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[63] *Id*. at 25.

[64] Rep. Act No. 8980, Sec. 4(a) provides:

It is not even an education program and does not involve the age range of students—elementary to high school—that is relevant to the Department Order. In any case, an isolated and passing mention does not equate to a mandate.

Petitioner's invocation of Republic Act Nos. 9155 and 8980 only serve to muddle the issues by entreating considerations that are irrelevant to the purposes of the statute (i.e., the Child and Youth Welfare Code) that actually pertains to and requires the organization of PTAs.

From the previously quoted provisions of the Child and Youth Welfare Code and the Education Act of 1982, the purposes for which the organization of PTAs is mandated are clear. First, a PTA is to be a forum for discussion. Second, a PTA exists to ensure the full cooperation of parents in the implementation of school programs. The assailed Department Order serves these purposes.

By ensuring fiscal transparency and accountability, and by providing the basic framework for organization and official recognition, the Department Order ensures that PTAs exist and function in a manner that remains consistent with the articulated purposes of PTAs under the Child and Youth Welfare Code

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Section 4. Definitions. – For purposes of this Act:

(a) Early Childhood Care and Development (ECCD) System refers to the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6), to promote their optimum growth and development. These programs include:

(1) Center-based programs, such as the day care service established under Republic Act No. 6972, public and private pre-schools, kindergarten or school-based programs, community or church-based early childhood education programs initiated by nongovernment organizations or people's organizations, workplace-related child care and education programs, child-minding centers, health centers and stations; and

(2) Home-based programs, such as the neighborhood-based play groups, family day care programs, parent education and home visiting programs.

and the Education Act of 1982. A framework for organization ensures that PTAs are properly organized and are both adequately representative of and limited only to those interests that are appropriate to the education of children in elementary and high school. Measures for fiscal transparency and accountability ensure that PTAs are not hampered by pecuniary or proprietary interests that have nothing to do with the effective implementation of school programs. Finally, mechanisms for official recognition ensure that only those associations that organize and conduct themselves in a manner that is consistent with these purposes are privileged with state sanction.

VII

Contrary to petitioner's contentions, the adoption of the Department Order is not tainted with fatal procedural defects.

Petitioner decries the supposed lack of public consultations as being violative of its right to due process.

Notice and hearing are not essential when an administrative agency acts pursuant to its rule-making power. In *Central Bank of the Philippines v. Cloribel*:[65]

> Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. It is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise[:]
>
> . . . .
>
> "It is also clear from the authorities that where the function of the administrative body is legislative, notice of hearing is not required by due process of law. See Oppenheimer, Administrative Law, 2 Md. L.R. 185, 204, *supra*, where it is said: 'If the nature of the administrative agency is essentially

[65] 150-A Phil. 86 (1972), [Per *C.J.* Concepcion, *En Banc*].

legislative, the requirements of notice and hearing are not necessary. The validity of a rule of future action which affects a group, if vested rights of liberty or property are not involved, is not determined according to the same rules which apply in the case of the direct application of a policy to a specific individual.' . . . It is said in 73 C.J.S. Public Administrative Bodies and Procedure, Sec. 130, pages 452 and 453: Aside from statute, the necessity of notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved. In so far as generalization is possible in view of the great variety of administrative proceedings, it may be stated as a general rule that notice and hearing are not essential to the validity of administrative action where the administrative body acts in the exercise of executive, administrative, or legislative functions; but where a public administrative body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whose rights or property may be affected by the action is entitled to notice and hearing."[66]

In any case, petitioner's claim that no consultations were held is belied by the Department of Education's detailed recollection of the actions it took before the adoption of the assailed Department Order:

1. On March 1, 2003, pursuant to D.O. No.14, s. 2004, respondent DepEd created a task force to review, revise, or modify D.O. No. 23, s. 2003 (the existing guidelines), in order to address numerous complaints involving PTAs and PTCAs and to resolve disputes relative to the recognition and administration of said associations. *The task force came up with draft guidelines after consultations with parents, teachers and students*;

2. On May 3, 2003, pursuant to D.O. No. 28, s. 2007, the task force was reconstituted to evaluate the draft guidelines prepared by the original task force and to review the provisions of D.O. No. 23;

3. On February 2, 2009, the reconstituted task force, after *soliciting comments, suggestions and recommendations from school*

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[66] *Id*. at 101-102, *citing Albert v. Public Service Commission*, 120 A. 2d. 346, 350-351.

heads and presidents of PTAs or PTCAs, submitted a draft of the "Revised Guidelines governing PTAs/PTCAs at the School Level;"

4. The draft was *submitted for comments and suggestions to the participants to the Third National Federation Supreme Student Governments (NFSSG) Conference* held in February 2009. The participants, composed of regional education supervisors, presidents of regional federations of Supreme Student Governments (SSG), and representatives from the SSG advisers, submitted another set of revised guidelines;

5. The draft was subjected to *further review and consultations*, which resulted in the final draft of D.O. No. 54, s. 2009.[67] (Emphasis supplied)

Apart from claiming that no consultations were held, petitioner decries the non-publication, by the Department of Education itself, of the assailed Department Order.

This does not invalidate the Department Order. As is evident from the previously quoted provisions of Book VII, Chapter 2 of the Administrative Code, all that is required for the validity of rules promulgated by administrative agencies is the filing of three (3) certified copies with the University of the Philippine Law Center. Within 15 days of filing, administrative rules become effective.[68]

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[67] *Rollo*, p. 151.

[68] 1987 ADM. CODE, Book VII, chap. 2 provides:

CHAPTER 2
Rules and Regulations
SECTION 3. Filing.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.
(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.
(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.
SECTION 4. Effectivity.—In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided

VIII

Pointing to Article II (2) of the assailed Department Order, which calls for the approval of the school head in the organizing of homeroom PTAs, petitioner claims that the Department Order undermines the organizational independence of PTAs. It claims that the assailed Department Order lacks standards or guidelines and effectively gives the school head unbridled discretion to impede the organizing of PTAs.

This is erroneous.

To begin with, and as previously noted, the organizing of PTAs is mandated by statute. Under Article 77 of the Child and Youth Welfare Code, every elementary school and high school is *required* to have a PTA. School heads are bound by this requirement. Moreover, the mandatory nature of organizing PTAs is recognized by the assailed Department Order itself. Article I (1) of the Department Order provides that "[e]very elementary and secondary school *shall* organize a Parents-Teachers Association."

Likewise, Article I of the assailed Department Order echoes the Child and Youth Welfare Code and the Education Act of 1982 in providing for the purposes and functions of PTAs. In doing so, it lays out the standards that are to guide school heads in deciding on whether official sanction shall be vested in a group seeking recognition as a PTA:

> I. General Policy
>
> 1. Every elementary and secondary school shall organize a Parents-Teachers Association (PTA) for the *purpose of providing a* ***forum for the discussion*** *of issues and their solutions related to the total school program* ***and to ensure the full cooperation of parents*** *in the efficient implementation of such program.*

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unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

Every PTA shall provide *mechanisms to ensure proper coordination* with the members of the community, provide an *avenue for discussing relevant concerns and provide assistance and support* to the school for the promotion of their common interest. Standing committees may be created within the PTA organization to coordinate with community members. Regular fora may be conducted with local government units, civic organizations and other stakeholders to foster unity and cooperation.

2. As an organization operating in the school, *the PTA shall adhere to all existing policies and implementing guidelines issued or hereinafter may be issued by the Department of Education*.

   The PTA shall serve as *support group and as a significant partner of the school* whose relationship shall be defined by cooperative and open dialogue to promote the welfare of the students.[69] (Emphasis supplied)

The involvement of school heads is limited to the initial stages of formation of PTAs. Once organized, the school heads hold no power over PTAs as they are limited to acting in an advisory capacity. Article IV (1) (d) of the Department Order categorically provides:

IV. Board of Directors and Officers

1. The administration of the affairs and management of activities of the PTA is vested with the Board of Directors and its officers in accordance with these guidelines or their respective Constitution and By-Laws, if any, which shall adhere to the following:

. . . .

d. *The School Head shall not serve as a member of the Board of Directors but as adviser to the PTA*[.][70] (Emphasis supplied)

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[69] *Rollo*, p. 25.

[70] *Id*. at 27.

Petitioner makes much of how "the assailed Department Order provides that the recognition of the PTCA or any PTA shall be cancelled by the Division PTA Affairs Committee upon the mere recommendation of the School Head. And in case of cancellation of the recognition of the PTA, the School Head is given the power the [sic] call a special election to replace the Board of Directors of the PTA whose recognition was cancelled."[71] It claims that this buttresses its claim that the Department Order 2009 undermines the organizational independence of PTAs.

In the first place, all that a school head has is recommending authority. More importantly, petitioner overlooks the qualifier to the school head's recommending authority:

> IX. Prohibited Activities and Sanctions
>
> . . . .
>
> 5. The recognition of any PTA shall be cancelled by the Division PTA Affairs Committee upon the recommendation of the School Head concerned *for any violation of the above-mentioned prohibited activities and these Guidelines*.
>
> Thereafter, the School Head may call for a special election to replace the Board of Directors of the PTA whose recognition was cancelled. Criminal, civil and/or administrative actions may be taken against any member or officer of the Board of the PTA who may appear responsible for failure to submit the necessary annual financial statements or for failure to account the funds of the PTA.[72] (Emphasis supplied)

It is evident that the recommending authority of the school head is not as "unbridled" as petitioner claims it to be. On the contrary, the assailed Department Order specifically limits a school head's competence to recommend cancellation of recognition to the instances defined by Article IX as prohibited activities.

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[71] *Id*. at 13.

[72] *Id*. at 32-33.

IX

Reference to an approving authority in order that an organization may be given official recognition by state organs, and thus vested with the competencies and privileges attendant to such recognition, is by no means unique to PTAs. By way of example, similar processes and requirements are observed and adhered to by organizations seeking recognition as business organizations (e.g., corporations),[73] government contractors,[74]

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[73] CORPORATION CODE, Sec. 17. Grounds when articles of incorporation or amendment may be rejected or disapproved. – The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein;
2. That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations;
3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid is false;
4. That the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.

No articles of incorporation or amendment to articles of incorporation of banks, banking and quasi-banking institutions, building and loan associations, trust companies and other financial intermediaries, insurance companies, public utilities, educational institutions, and other corporations governed by special laws shall be accepted or approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law.

[74] Republic Act No. 9184, Section 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects.– The BAC or, under special circumstances specified in IRR, its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of Goods and Infrastructure Projects, based on the bidders' compliance with the eligibility requirements within the period set forth in the Invitation to Bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders. The documents submitted in satisfaction of the eligibility requirements shall

legitimate labor organizations,[75] and political parties participating in the party-list system.[76]

The demarcation of the broad right to form associations vis-à-vis regulations such as registration, requisite approval by

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be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted.

A prospective bidder may be allowed to summit his eligibility requirements electronically. However, said bidder shall later on certify under oath as to correctness of the statements made and the completeness and authenticity of the documents submitted.

[75] LABOR CODE, Article 234.A Requirements of registration. - A federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (₱50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

(c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and

(e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it. (As amended by Batas Pambansa Bilang 130, August 21, 1981 and Section 1, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007).

[76] Republic Act No. 7941, Sec. 5. Registration. – Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: provided, that the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

defined authorities, and other such formalities is settled in jurisprudence.

In *Philippine Association of Free Labor Unions v. Secretary of Labor*,[77] this court was confronted with allegations that Section 23[78] of Republic Act No. 875, otherwise known as the

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The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

[77] 136 Phil. 289 (1969) [Per *J.* Concepcion, *En Banc*].

[78] Rep. Act No. 875, Sec. 23 provides:

Section 23. Registration of Labor Organizations. –
(a) There shall be in the Department of Labor a Registrar of Labor Organizations (hereinafter referred to as the Registrar).
It shall be the duty of the Registrar to act as the representative of the Secretary of Labor in any proceeding under this Act upon any question of the association or representation of employees, to keep and maintain a registry of legitimate labor organizations and of their branches of locals, and to perform such other functions as the Secretary of Labor may prescribe.
(b) Any labor organization, association or union of workers duly organized for the material, intellectual and moral well-being of its members shall acquire legal personality and be entitled to all the rights and privileges granted by law to legitimate labor organizations within thirty days of filing with the office of the Secretary of Labor notice of its due organization and existence and the following documents, together with the amount of five pesos as registration fee, except as provided in paragraph "d" of this section:

(1) A copy of the constitution and by-laws of the organization together with a list of all officers of the association, their addresses and the address of the principal office of the organization;

(2) A sworn statement of all officers of the said organization, association or union to the effect that they are not members of the Communist Party and that they are not members of any organization which teaches the overthrow of the Government by force or by any illegal or unconstitutional method; and

(3) If the applicant organization has been in existence for one or more years, a copy of its last annual financial report.

(c) If in the opinion of the Department of Labor the applicant organization does not appear to meet the requirements of this Act for registration, the Department shall, after ten days' notice to the applicant organization, association or union, and within thirty days of receipt of the above-mentioned

Industrial Peace Act, which spelled out the requirements for registration of labor organizations, "unduly curtail[ed] the freedom of assembly and association guaranteed in the Bill of Rights."[79]

Sustaining the validity of Section 23, this court put to rest any qualms about how registration and approval, as requisites to the acquisition of legal personality and the exercise of rights

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documents, hold a public hearing in the province in which the principal office of the applicant is located at which the applicant organization shall have the right to be represented by attorney and to cross-examine witnesses; and such hearing shall be concluded and a decision announced by the Department within thirty days after the announcement of said hearing; and if after due hearing the Department rules against registration of the applicant, it shall be required that the Department of Labor state specifically what data the applicant has failed to submit as a prerequisite of registration. If the applicant is still denied, it thereafter shall have the right within sixty days of formal denial of registration to appeal to the Court of Appeals, which shall render a decision within thirty days, or to the Supreme Court.
(d) The registration and permit of a legitimate labor organization shall be cancelled by the Department of Labor, if the Department has reason to believe that the labor organization no longer meets one or more of the requirements of paragraph (b) above; or fails to file with the Department of Labor either its financial report within sixty days of the end of its fiscal year or the names of its new officers along with their non-subversive affidavits as outlined in paragraph (b) above within sixty days of their election; however, the Department of Labor shall not order the cancellation of the registration and permit without due notice and hearing, as provided under paragraph (c) above, and the affected labor organization shall have the same right of appeal to the courts as previously provided.

The Department of Labor shall automatically cancel or refuse registration and permit to the labor organization or the unit of a labor organization finally declared under sections five and six of this Act to be a company union as defined by this Act. The restoration or granting of registration and permit shall take place only after the labor organization petitions the Court and the Court declares (1) that full remedial action has been taken and (2) sufficient time has elapsed to counteract the unfair labor practice which resulted in the company union status.

(e) Provisions of Commonwealth Act Numbered Two hundred and thirteen providing for registration, licensing, and cancellation of registration of organizations, associations or unions of labor, as qualified and expanded by the preceding paragraphs of this Act, are hereby amended.

[79] *Philippine Association of Free Labor Unions v. Secretary of Labor*, 136 Phil. 289, 290 (1969) [Per *J.* Concepcion, *En Banc*].

and privileges that are accorded to an officially recognized organization, are not incompatible with the right to form associations. On the contrary, this court underscored that the establishment of these requirements is a valid exercise of police power as public interest underlies the conduct of associations seeking state recognition:

> The theory to the effect that Section 23 of Republic Act No. 875 unduly curtails the freedom of assembly and association guaranteed in the Bill of Rights is devoid of factual basis. The registration prescribed in paragraph (b) of said Section is not a limitation to the right of assembly or association, which may be exercised with or without said registration. The latter is merely a condition *sine qua non* for the acquisition of legal personality by labor organizations, associations or unions and the possession of the "rights and privileges granted by law to legitimate labor organizations." The Constitution does not guarantee these rights and privileges, much less said personality, which are mere statutory creations, for the possession and exercise of which registration is required to protect both labor and the public against abuses, fraud, or impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations and union of workers are engaged affect public interest, which should be protected. Furthermore, the obligation to submit financial statements, as a condition for the non-cancellation of a certificate of registration, is a reasonable regulation for the benefit of the members of the organization, considering that the same generally solicits funds or membership, as well as oftentimes collects, on behalf of its members, huge amounts of money due to them or to the organization.[80] (Citations omitted)

The right to organize does not equate to the state's obligation to accord official status to every single association that comes into existence. It is one thing for individuals to galvanize themselves as a collective, but it is another for the group that they formed to not only be formally recognized by the state, but also bedecked with all the benefits and privileges that are attendant to official status. In pursuit of public interest, the state can set reasonable

[80] *Id.*

regulations—procedural, formal, and substantive—with which organizations seeking state imprimatur must comply.

In this court's January 9, 1973 Resolution, *In the Matter of the Integration of the Bar of the Philippines*,[81] this court underscored the importance of the state's regulation of the collectivity (although hitherto "unorganized and incohesive"[82]) of those who, by their admission to the bar, are burdened with responsibilities to society, courts, colleagues, and clients.

This court quoted with approval the following statements made by the Commission on Bar Integration:

> In all cases where the validity of Bar integration measures has been put in issue, the Courts have upheld their constitutionality.
>
> The judicial pronouncements support this reasoning:
>
> — Courts have inherent power to supervise and regulate the practice of law.
>
> — The practice of law is not a vested right but a privilege; a privilege, moreover, clothed with public interest, because a lawyer owes duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation; and takes part in one of the most important functions of the State, the administration of justice, as an officer of the court.
>
> — Because the practice of law is privilege clothed with public interest, it is far and just that the exercise of that privilege be regulated to assure compliance with the lawyer's public responsibilities[.][83]

For the same purpose of protecting and advancing public interest, this court has sustained the validity not only of those requirements relating to the establishment and registration of associations, but also the substantive standards delimiting who may join organizations. This is illustrated in *United Pepsi-Cola Supervisory Union v. Laguesma*,[84] where this court recognized

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[81] 151 Phil. 132 (1973) [*Per Curiam, En Banc*].

[82] *Id*. at 138.

[83] *Id*. at 137-138.

[84] 351 Phil. 244 (1998) [Per *J.* Mendoza, *En Banc*].

the validity of the first sentence of Art. 245 of the Labor Code,[85] which prohibits managerial employees from forming, assisting, or joining labor organizations, in relation to Article III, Section 8 of the 1987 Constitution. Here, this court recognized that a classification distinguishing managerial employees from rank-and-file employees permitted to form and join labor organizations is grounded on identifiable and appreciable differences. Thus, "there is a rational basis for prohibiting managerial employees from forming or joining labor organizations;"[86] and, "as to [managerial employees] the right of self-organization may be regulated and even abridged."[87]

> Nor is the guarantee of organizational right in Art. III, §8 infringed by a ban against managerial employees forming a union. The right guaranteed in Art. III, §8 is subject to the condition that its exercise should be for purposes "not contrary to law." In the case of Art. 245, there is a rational basis for prohibiting managerial employees from forming or joining labor organizations. As Justice Davide, Jr., himself a constitutional commissioner, said in his ponencia in *Philips Industrial Development, Inc. v. NLRC*:
>
>> In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale

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[85] LABOR CODE, Art. 245 provides:

Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

[86] *United Pepsi-Cola Supervisory Union v. Laguesma*, 351 Phil. 244, 279 (1998) [Per *J.* Mendoza, *En Banc*].

[87] *Id.* at 278.

behind the ineligibility of managerial employees to form, assist or joint a labor union equally applies to them.

In *Bulletin Publishing Co., Inc. v. Hon. Augusto Sanchez*, this Court elaborated on this rationale, thus:

> ". . . The rationale for this inhibition has been stated to be, because if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership."

To be sure, the Court in *Philips Industrial* was dealing with the right of confidential employees to organize. But the same reason for denying them the right to organize justifies even more the ban on managerial employees from forming unions. After all, those who qualify as top or middle managers are executives who receive from their employers information that not only is confidential but also is not generally available to the public, or to their competitors, or to other employees. It is hardly necessary to point out that to say that the first sentence of Art. 245 is unconstitutional would be to contradict the decision in that case.[88]

Our educational system demonstrates the integral role of parents. It is a system founded not just on the relationship between students on the one hand and educators or schools on the other, but as much on the participation of parents and guardians. Parents and guardians are foremost in the Education Act of 1982's enumeration of the "members and elements of the educational community":

Section 6. Definition and Coverage – "Educational community" refers to those persons or groups of persons as such or associated in institutions involved in organized teaching and learning systems.

The members and elements of the educational community are:

1. "Parents" or guardians or the head of the institution or foster home which has custody of the pupil or student.

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[88] *Id.* at 279-280, *citing Philips Industrial Development v. NLRC*, G.R. No. 88957, June 25, 1992, 210 SCRA 339, 347-348 [Per *J.* Davide, Jr., Third Division].

2. "Students," or those enrolled in and who regularly attend and educational institution of secondary or higher level of a person engaged in formal study. "Pupils," are those who regularly attend a school of elementary level under the supervision and tutelage of a teacher.

3 "School personnel," or all persons working for an educational institution, which includes the following:

   a. "Teaching or academic staff," or all persons engaged in actual teaching and/or research assignments, either on full- time or part-time basis, in all levels of the educational system.

   b. "School administrators," or all persons occupying policy implementing positions having to do with the functions of the school in all levels.

   c. "Academic non-teaching personnel," or those persons holding some academic qualifications and performing academic functions directly supportive of teaching, such as registrars, librarians, research assistants, research aides, and similar staff.

d. "Non-academic personnel," or all other school personnel not falling under the definition and coverage of teaching and academic staff, school administrators and academic non-teaching personnel.

4. "Schools," or institutions recognized by the State which undertake educational operations.

A parent-teacher association is a mechanism for effecting the role of parents (who would otherwise be viewed as outsiders) as an indispensable element of educational communities. Rather than being totally independent of or removed from schools, a parent-teacher association is more aptly considered an adjunct of an educational community having a particular school as its locus. It is an "arm" of the school. Given this view, the importance of regulation vis-à-vis investiture of official status becomes manifest. According a parent-teacher association official status not only enables it to avail itself of benefits and privileges but also establishes upon it its solemn duty as a pillar of the educational system.

WHEREFORE, in light of the foregoing, the Petition is **DISMISSED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Leonardo-de Castro, J., joins the dissent of *J.* Brion.

Brion, J., see dissenting opinion.

Jardeleza, J., no part.

Mendoza, J., on leave.

DISSENTING OPINION

BRION, *J.*:

Background

On June 1, 2009, respondent Department of Education (*DepEd*), through then Secretary Jesli A. Lapus, issued Department Order No. 54, series of 2009 (*DO 54*), entitled the "Revised Guidelines Governing Parents-Teachers Associations (*PTAs*) at the School Level."

DO 54 aimed to address the "increasing reports of malpractices [of] officers or members of the PTAs, such as but not limited to (1) [the absconding of officers] with contributions and membership fees; (2) [the] nondisclosure of the status of funds and [the] non-submission of financial statements; and (3) [the] misuse of funds."[1]

To address these issues, DO 54 required that **before any PTA may be organized, the school head's approval must first be secured**. Arguing that this prerequisite undermines the independence of the PTAs, petitioner Quezon City PTCA Federation, Inc. (*QC PTCA*) directly filed a petition for *certiorari* and prohibition with the Court to nullify DO 54.

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[1] *Ponencia,* p. 2.

The ponencia and the dissent

In ruling for the DepEd, the *ponencia* holds that the grant of powers to the school heads to approve or disapprove a PTA's organization is consistent with the mandate of Batas Pambansa Blg. (*BP*) 232[2] and Article 77[3] of Presidential Decree (*PD*) 603.[4] Under these laws, elementary and secondary schools are **mandated to organize** their own PTAs.[5] Since DO 54 echoed the provisions of these statutes on the functions of the PTAs, it effectively laid out the guidelines which the school heads must observe in deciding whether or not to approve the organization of a PTA.[6]

Furthermore, the *ponencia* explains that the involvement of school heads is limited to the initial stages of a PTA's constitution. Once created, the school heads would only act as advisers and could no longer intervene with the PTA's affairs.[7]

Lastly, the *ponencia* asserts that while the law mandates the creation and organization of PTAs, no such mandate extends to ParentTeacher Community Associations (*PTCAs*).

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[2] Education Act of 1982.

[3] **Article 77.** *Parent-Teacher Associations.*– Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Associations all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

[4] The Child and Youth Welfare Code.

[5] *Ponencia,* p. 25.

[6] *Id*.

[7] *Id*.

I disagree with the *ponencia* for the following reasons: ***first***, the distinction made by the *ponencia* between PTAs and PTCAs is immaterial to this case; ***second***, the **DepEd exceeded its rule-making power** when it mandated in DO 54 that the PTAs in elementary and secondary schools may only be organized upon the school head's approval; ***third and last***, **the approval requirement is unreasonable** and does not directly address the issue of mismanagement of PTA funds.

I. The distinction between PTCAs and PTAs is immaterial.

I disagree with the *ponencia's* view that the law mandates the creation and organization of "Parent and Teachers Associations" but not Parent Teachers Community Associations (*PTCA*s), as neither BP 232 nor PD 603 mentions PTCAs.[8]

A Parent Teacher Association is one whose purpose is to provide a forum for the discussion of problems and solutions relating to the total school program, and ensure that parents and teachers fully cooperate in the efficient implementation of such program.[9] It may be organized by the parents themselves, or by the parents with the teachers.[10] An association that meets these criteria is a PTA in the eyes of the law.

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[8] As is evident from PD 603's use of the word 'shall,' it is mandatory for parent-teachers associations to be organized in elementary and secondary schools. As against this, Pres. Dec. 603 is silent on the creation of parent-teachers community associations or PTCAs. Batas Pambansa 232 is equally silent on this. From this, while the creation and/or organization of PTAs are statutorily mandates, the same could not be said of PTCAs. *Ponencia,* p. 20.

[9] PD 603 Art. 77. Parent-Teacher Associations. – Every elementary and secondary school shall organize a parent-teacher association ***for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program.*** All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails. (emphasis and omissions supplied)

[10] PD 603 is complemented by Section 8 of BP 232, which states that parents have the "right to organize by themselves and/or with teachers for

Hence, what makes an organization a ParentTeacher Association is its objective and composition, and not its appellation.

Apparently, the *ponencia* discriminated against the petitioner QC PTCA when it assumed that the latter is not a Parent Teacher Association without distinguishing PTAs from PTCA, and without discussing QC PTCA's distinct circumstances that would distinguish it from a PTA.

Contrary to the *ponencia's* observations,[11] no less than the respondent recognized that PTCAs stand on equal footing with PTAs. On June 24, 2009, the DepEd issued Department Order No. 67, s. 2009 (DO 67)[12] clarifying DO 54. It reads:

x x x x x x DepED Order No. 54 is hereby clarified: (omission supplied)

Whereas, DepED Order No. 54, s. 2009 (X. Transitory Provision) provides: "Existing and duly recognized PTCAs and its Federations shall no longer be given recognition effective School Year 2009-2010. They shall cease operation at the end of School Year 2008-2009 and given until June 30, 2009 to dissolve, wind up their activities, submit their financial reports and turn over all documents to the School Heads and Schools Division Superintendents, respectively;

Whereas, there is a need to clarify the purpose and intent of such provision to mean that PTCAs that do not conform to these guidelines shall no longer be given recognition but in no way to abolish the PTCAs;

Wherefore, the same Transitory Provision of DepED Order No. 54, s. 2009 shall read as follows:

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the purpose of providing a forum for the discussion of matters relating to the total school program, and for ensuring the full cooperation of parents and teachers in the formulation and efficient implementation of such programs."

[11] "Petitioner is in error for asserting that the assailed Department Order is contrary to the statutes it aims to put into effect by failing to put PTCAs on the same footing as PTAs"; *ponencia*, p. 25.

[12] Entitled Clarification to DepEd Order No. 54, s. 2009 (Revised Guidelines Governing Parents-Teachers Associations (PTAs) at the School Level) http://www.deped.gov.ph/orders/do-67-s-2009, Last accessed January 2, 2016.

X. Transitory Provision

Existing PTCAs, whether SEC registered or not, may conform to these Guidelines effective School Year 2009-2010 in order to be recognized as the duly constituted PTAs; provided, that PTAs already existing and duly recognized at the time of the signing of this Order shall continue to exist and operate as such subject to this Order and other existing rules and regulations of the Department. (emphasis in the original, underscoring supplied)

Thus, the distinction between PTCAs and PTAs is more imagined than real, particularly for PTCAs already in existence since they can be recognized as PTAs. Thus, I find it misplaced to generalize and discriminate against **all PTCAs** simply because the law only mentions "Parent Teachers Associations." In my view, for purposes of this case, *the distinction the ponencia creates between PTAs and PTCAs is insignificant and lacks materiality.*

II. The DepEd exceeded its rule-making power.

Delegation of powers is a rule that is widely recognized especially in the legislative branch of government. With the increasing complexity of the government's functions and the growing inability of the legislature to address the myriad of problems demanding its attention, Congress found it necessary to delegate its powers to administrative agencies. This is the power of **subordinate legislation**.

"With this power, administrative bodies may implement the broad policies laid down in a statute by 'filling in' the details which the Congress may not have the opportunity or competence to provide."[13] On this basis, administrative agencies may promulgate supplementary regulations which have the force and effect of law.[14]

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[13] *Eastern Shipping Lines v. POEA,* G.R. No. 76633, October 18, 1988, 166 SCRA 533.

[14] *Id.*

In the DepEd's case, its rule-making power finds its legislative basis in Section 57[15] of BP 232. Under this provision, the DepEd has the authority to "**promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system** <u>**in accordance with declared policy**</u>." Moreover, Section 70[16] of this law, in relation to EO 117[17] and RA 9155,[18] expressly grants the DepEd Secretary the authority to administer and enforce BP 232 and to promulgate its necessary implementing rules and regulations.

However, the power of subordinate legislation does not mean the absolute transmission of legislative powers to administrative agencies such as the DepEd.

In order for a valid delegation to exist, two basic tests must be complied with: the **completeness test**, and the **sufficient standard test**.

"Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature, such that, when it reaches the delegate, the only thing he would have to do is

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[15] **Section 57.** *Functions and Powers of the Ministry* – The Ministry shall:

1. Formulate general education objectives and policies, and adopt long-range educational plans;
2. Plan, develop and implement programs and projects in education and culture;
3. Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy;
4. Set up general objectives for the school system;
5. Coordinate the activities and functions of the school system and the various cultural agencies under it;
6. Coordinate and work with agencies concerned with the educational and cultural development of the national cultural communities; and
7. Recommend and study legislation proposed for adoption.

[16] **Section 70.** *Rule-making Authority* – The Ministry of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

[17] Reorganization Act of the Ministry of Education, Culture and Sports.

[18] Governance of Basic Education Act of 2001.

enforce it. On the other hand, under the sufficient standard test, there must be adequate guidelines or stations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. These two tests are both intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative."[19]

Also, these two tests ensure that administrative agencies, in the exercise of their power of subordinate legislation, create rules and regulations that are **germane to the objects and purposes of the law they implement**; and **are not in contradiction, but in full conformity with the standards prescribed by this law**.[20]

In *Lokin v. Commission on Elections*,[21] the Court invalidated Section 13 of COMELEC Resolution No. 7804 for being contrary to RA 7941, the law governing our party list system. The Court explained:

> The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election, **has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby**. **The IRRs the COMELEC issues for that purpose should always accord with the law to be implemented, and should not override, supplant, or modify the law**. It is basic that the **IRRs should remain consistent with the law they intend to carry out**.[22] [emphasis supplied]

Guided by these rulings, I take the position that **DO 54 is invalid insofar as it grants to the school heads the power to approve or disapprove the organization of a PTA**, *viz*:

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[19] *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas,* G.R. No. 191424, August 7, 2013, 703 SCRA 290, 312, citing *Eastern Shipping Lines v. POEA, supra* note 13.

[20] *Gerochi v. Department of Energy,* G.R. No. 159796, July 17, 2007, 554 Phil. 563, 585.

[21] 635 Phil. 372, 380 (2010).

[22] *Id*. at 399.

II. Organization of PTAs at the School Level

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2. Within fifteen (15) days from the start of the school year the Homeroom Adviser and the Parents/Guardians shall organize the Homeroom PTA **with the approval of the School Head**.[23]

In my view, the approval requirement is contrary to the law and to the state policy on the creation of PTAs, and transgresses the prohibition on further delegation of delegated powers.

A. The approval requirement is contrary to law and to state policy.

The authority of administrative agencies to create rules and regulations such as DO 54 **is not an absolute authority**. This is limited by the express legislative purpose of the law it implements, the standards set out in this law, and the express wording of the provisions of the law. The rules and regulations that administrative agencies promulgate should not be *ultra vires* or beyond the limits of the authority conferred to them.[24]

Also, it is a settled rule that administrative agencies, in the exercise of their power of subordinate legislation, should not enlarge, alter, or restrict the provisions of the law it administers and enforces, and should not engraft additional non-contradictory requirements that the Congress did not contemplate.[25] Thus, in formulating rules and regulations, administrative agencies should not amend, supplant, or modify the law which breathes life to it.

Under BP 232, the law which sets out the powers and functions of the DepEd, as well as the rights and obligations of persons comprising the country's educational community, the parents whose children are enrolled in schools have "the **right to <u>organize by themselves</u>** and/or with teachers for the purpose of providing

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[23] Department of Education Order No. 54, series of 2009.

[24] *Supra* note 21, at 393-394.

[25] *Id*.

a forum for the discussion of matters relating to the total school program, and for ensuring the full cooperation of parents and teachers in the formulation and efficient implementation of such programs."[26]

Consistent with this legal right, Section 77 of PD 603 requires every elementary and secondary school to "organize a [PTA] for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program."

The provisions of BP 232 and PD 603 emphasize the **clear mandate** of schools to form their own PTAs consistent with the right of parents to be informed of the school programs affecting their children, and to participate in the formulation and implementation of these programs.

Section 8 of BP 232 even went one step further when it provided that the parents may organize **by themselves** when taking part in school matters that affect their children. In other words, the parents, **even without the school's involvement,** may organize and coordinate among themselves in exercising their right to a meaningful and proactive participation in the school programs concerning their children's welfare.

The *ponencia* itself recognized the mandatory nature of the school's PTA formation but justified the validity of the approval requirement by explaining that the ***school head's involvement would be limited only to the initial stages of the PTA's organization***; that once the PTA is created, the school head's participation would merely be in an advisory capacity.

However, the *ponencia* lost sight of the glaring contradiction between the clear mandate of BP 232 and DO 54's school head approval requirement. The initial stage that the *ponencia* referred to is ***a crucial stage*** as ***it is the point when a PTA is organized.*** How could the parents exercise their right to organized participation if in the first place, they could not form the medium by which they may do so?

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[26] Section 8, BP 232.

To my mind, DO 54 lessens the chances, if not totally precludes the organization of the PTA by granting the school head the **sole power** to determine and approve its organization.

Moreover, the approval requirement is not only contrary to the rights of parents to organize and involve themselves in school programs and matters affecting their children; ***it also contravenes the declared policy of the State,*** as enunciated in Section 3[27] of BP 232, which is to establish a complete, adequate, and integrated education system that would contribute to the achievement of an accelerating rate of economic development and social progress, and would ensure the "**maximum participation of all the people in the attainment** and enjoyment of the benefits of such growth."

B. The prohibition on the further delegation of delegated powers

The general rule is that "what has been delegated may not be delegated." This is based on the ethical principle that a delegated power is not only a right but a duty that the delegate must perform through the instrumentality of his own judgment and not through the intervening mind of another.[28] This is embodied in the Latin maxim, *potestas delegata non delegari potest*.

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[27] **Section 3.** *Declaration of Basic Policy* – It is the policy of the State to establish and maintain a complete, adequate and integrated system of education relevant to the goals of national development. Toward this end, the government shall ensure, within the context of a free and democratic system, maximum contribution of the educational system to the attainment of the following national developmental goals:

1. To achieve and maintain an accelerating rate of economic development and social progress;
2. To ensure the maximum participation of all the people in the attainment and enjoyment of the benefits of such growth; and
3. To achieve and strengthen national unity and consciousness and preserve, develop and promote desirable cultural, moral and spiritual values in a changing world.

[28] *Gerochi v. Department of Energy,* 554 Phil. 563, 584 citing *Abakada Guro Party List v. Ermita,* G.R. Nos. 168056, 168207, 168461, 168463 and 168730, September 1, 2005, 469 SCRA 10, 115-116.

The power to approve or disapprove PTAs is not a perfunctory or mechanical act but requires the exercise of the school head's discretion. Notably, however, DO 54 did not specify the procedure or the guidelines that the school heads must observe in deciding whether to approve the organization of a PTA.

For instance, if parents divide themselves into two or more factions, these factions might refuse to cooperate with one another, and decide to organize separate PTAs. Since DO 54 states that "*there shall be only one PTA . . . which shall be recognized by the School Head,*"[29] the latter will necessarily have to approve only one of these PTAs.

In the same light, assuming a PTA is dissolved and a majority of the parents decides to organize a new one, while the minority agrees to maintain the existing PTA, which PTA should the school head approve?

Unfortunately, only the school heads can supply the answer to these questions because DO 54 does not provide answers.

The danger in a broad grant of discretion is neither unlikely nor remote. In *Ynot v. Intermediate Appellate Court*,[30] Justice Cruz had occasion to say:

It is laden with perilous opportunities for partiality and abuse, and even corruption. One searches in vain for the usual standard and the reasonable guidelines, or better still, the limitations that the said officers must observe when they make their distribution. There is none. ***Their options are apparently boundless. Who shall be the fortunate beneficiaries of their generosity and by what criteria shall they be chosen? Only the officers named can supply the answer, they and they alone may choose the grantee as they see fit, and in their own exclusive discretion.*** Definitely, there is here a "roving commission," a wide and sweeping authority that is not "canalized within banks that keep it from overflowing," in short, a clearly profligate and therefore invalid delegation of legislative powers.

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[29] Par IV (1) (e) of DO 54.

[30] 232 Phil. 615, 630 (1987).

The *ponencia* disregards this possibility by relying on DO 54's *general policy* which, to him, provides *ample* standards to guide the school heads' discretion:[31]

1. Every elementary and secondary school shall organize a Parents- Teachers Association (PTA) for the *purpose of providing a **forum for the discussion** of issues and their solutions related to the total school program **and to ensure the full cooperation of parents** in the efficient implementation of such program.*

Every PTA shall provide *mechanisms to ensure proper coordination* with the members of the community, provide an *avenue for discussing relevant concerns, and provide assistance and support* to the school for the promotion of their common interest. Standing committees may be created within the PTA organization to coordinate with community members. Regular fora may be conducted with local government units, civic organizations and other stakeholders to foster unity and cooperation. (emphasis in the *ponencia*)

2. As an organization operating in the school, the PTA *shall adhere to all existing policies and implementing guidelines issued or hereinafter may be issued by the Department of Education.*

The PTA shall serve *as support group and as a significant partner of the school* whose relationship shall be defined by cooperative and open dialogue to promote the welfare of the students. (emphasis in the *ponencia*)

I disagree with this view.

The school head's approval comes at the PTA's inception. At that point, the PTA and its members have yet to perform any act as the proposed PTA has yet to function. Thus, the school heads cannot use the cited general policies unless the school heads operate based on a presumption of the members' future conduct. From this vantage point, it is clear that the cited general policies cannot possibly guide the school heads at the point they decide.

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[31] *Ponencia*, p. 25.

In any case, even if these policies are assumed to be standards, they would still be insufficient as there are *simply no guidelines in DO 54 that would guide school heads in approving one PTA over the other.*

The absence of guidelines will consequently force school heads to either: ***first***, disclose their standards to interested parties, *i.e., the parents, the teachers, and the students*; or ***second***, keep the standards to themselves.

Should they keep the standards to themselves, the school heads would be accused of arbitrariness because the interested parties are not informed of the standards for approval. Such arbitrariness would authorize the school heads to approve a PTA according to whim, or in the opposite direction, deny parents (whose PTA is disapproved) of the right to participate in the formation and implementation of the total school program.[32]

Thus, to avoid any accusations and the appearance of arbitrariness, the school heads are more likely disclose their standards; in which case, the disclosure to interested parties, whether oral or in writing, is no different from the exercise of rule-making powers that – by force of the law that Congress enacted – only the DepEd can exercise.

In other words, DO 54 gives the school heads a very broad, if not, an unbridled discretion in the formation of the PTAs. By failing to provide the guidelines or even outline the rules that must be considered in approving or disapproving PTAs, DO 54, in effect, grants the school heads the authority ***to create their own rules and to substitute their discretion*** in place of the DepEd.

As I have earlier discussed, the DepEd through BP 232, received from Congress not only the power to regulate but also the power to formulate rules that would implement BP 232's mandate.[33] ***This authority belongs solely to the DepEd*** as the only recipient of the Congress' delegated powers under BP 232.

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[32] Section 8, Batas Pambansa Blg. 232.

[33] Under Section 54 of BP 232, the DepEd is granted the powers of supervision and regulation of educational institutions, as well as the

When the DepEd, through DO 54, passed on to the school heads the power to approve or disapprove the organization of the PTAs, thus effectively devolving its regulatory powers to these persons, the DepEd violated the administrative rule of nondelegation of delegated powers. To repeat, "what has been delegated may not be delegated."

There is no express provision in law granting the DepEd the power to further delegate its regulatory and rule-making powers, particularly to the school heads. The authority to issue rules that would affect the PTAs rests only with the DepEd. *On this basis, the school heads should not be allowed to determine their own procedure and guidelines in approving or disapproving the organization of a PTA.*

III. The approval requirement is unreasonable and does not directly address the issue of mismanagement of PTA funds.

To be valid, implementing rules and regulations (*IRRs*) must be reasonable. Administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view.[34] ***If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down.***[35]

DO 54 was issued primarily to address the problem of mismanagement of the PTA funds by its members and officers. Unfortunately, the school head approval requirement does not address this problem.

The school heads' approval comes at the PTA's inception, *i.e.,* even before the PTA is established and becomes operational.

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administration over the education system which includes the parents of students enrolled in schools.

[34] *Supra* note 21, at 400 citing *Lupangco v. Court of Appeals,* No. 77372, April 29, 1988, 160 SCRA 848, 858-859.

[35] *Id.* at 858-859.

At that point, the members of the proposed PTA have yet to perform any act, much less, handle PTA funds. On the other hand, mismanagement only happens when the PTA is already organized, and not during its inception. There are no funds to be handled when the PTA is yet to be formed.

In this sense, the approval requirement is unreasonable since it has no relation to the mismanagement of PTA funds, and unduly restricts the organization of the PTAs even before any irregularity has arisen.

More importantly, the problem of PTA fund mismanagement had already been adequately addressed in Part VIII[36] (*Financial Matters*) of DO 54, which outlined what the PTAs may or may not do with their financial collections. Accordingly, there is no necessity for the DepEd to transgress the law.

Under these circumstances, I opine that the approval requirement does not deal with the evils that DO 54 aims to address. Thus, this requirement is not only irrelevant to DO 54's policy and purpose, but also to the mandate and policy of BP 232 and PD 603 — the statutes which DO 54 seeks to implement.

As a final remark, I caution that this dissent is not intended to grant the PTAs unrestrained powers in the exercise of their rights under the law. As the *ponencia* does, I am aware that the

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[36] DO 54's Paragraph VIII ensures, among others, that: (i) PTA collections and contributions shall be remitted to the school, the student government, to the student organization concerned, on the same day they were collected; (ii) PTA contributions shall be reasonable; (iii) non-contribution shall not be a basis for non-admission or non-issuance of clearances to the students; (iv) contributions shall be on a per-parent basis; (v) no PTA contributions are collected during enrolment period; (vi) teachers, school personnel and officials are not involved in collecting, or in safekeeping or disbursing PTA funds; (vii) contributions or proceeds of fund raising activities shall be deposited in reputable banking institutions; (viii) disbursements shall be in accord with generally accepted accounting and auditing rules and regulations; (ix) disbursements shall be covered by appropriate PTA resolutions; (x) the PTA's financial records are made available for inspection at any time; (xi) PTAs submit and post in bulletin boards annual and midyear *audited* financial statements, including approved resolutions.

approval requirement is part of DepEd's efforts to recognize only those organizations that conduct themselves in a lawful manner. I am not against DO 54's lofty ideals. My disagreement with the *ponencia's* ruling stems from the fact that DO 54, insofar as it mandates the school head's approval before any PTA may be organized, is invalid due to its violation of recognized administrative law doctrines that the Court must uphold.

If the DepEd deems it best to completely overhaul the PTA system, it can study, recommend, and propose the adoption of appropriate legislation.[37] It cannot, however, shortcut procedure by the mere issuance of a Department Order.

In these lights, I vote that DO 54 should be nullified insofar as it provides that a PTA may only be organized after the approval of the school head.

SECOND DIVISION

[GR. No. 173921. February 24, 2016]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **ISAGANI DAWAL, LORNA CONCEPCION, and BONIFACIO SINOBAGO,** *respondents.*

[GR. No. 173952. February 24, 2016]

ISAGANI DAWAL, LORNA CONCEPCION, and BONIFACIO SINOBAGO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE AIRLINES, INC., AVELINO L. ZAPANTA, and CESAR B. LAMBERTE,** *respondents.*

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[37] Section 57 (7), Batas Pambansa Blg. 232.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT CAN PROSPER ONLY IF THE COURT OF APPEALS, IN DECIDING ON A RULE 65 PETITION, FAILS TO CORRECTLY DETERMINE WHETHER THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.—** A petition for *certiorari* under Rule 45 of the Rules of Court can prosper only if the Court of Appeals, in deciding on a Rule 65 petition, fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion. The Court of Appeals' review of the contradictory findings of labor tribunals was proper as it was based on the evidence presented and done in the exercise of its *certiorari* jurisdiction. In reviewing a Rule 65 petition, the Court of Appeals properly reversed the National Labor Relations Commission's February 28, 2002 Decision, the latter having been rendered with grave abuse of discretion. After "tak[ing] judicial notice of [PAL's business situation,]" the National Labor Relations Commission ruled that it was beyond the Labor Arbiter's power to determine whether there was a need or urgency for the spin-off. The National Labor Relations Commission clearly ignored settled law and jurisprudence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; THE EMPLOYER HAS THE DUTY TO ESTABLISH, CLEARLY AND SATISFACTORILY, ALL THE ELEMENTS FOR A VALID RETRENCHMENT. —** [T]he employer has the burden to prove the factual and legal basis for the termination of its employees. PAL has the duty to establish, clearly and satisfactorily, all the elements for a valid retrenchment. "Failure to do so 'inevitably results in a finding that the dismissal is unjustified.'"

3. **ID.; ID.; ID.; MANAGEMENT PREROGATIVE IS NOT UNBRIDLED AND LIMITLESS, AND IT CANNOT JUSTIFY VIOLATION OF LAW OR THE PURSUIT OF ANY ARBITRARY OR MALICIOUS MOTIVE.—** PAL's claim of management prerogative does not automatically absolve it of liability. Management prerogative is not unbridled and

limitless. Nor is it beyond this court's scrutiny. Where abusive and oppressive, the alleged business decision must be tempered to safeguard the constitutional guarantee of providing "full protection to labor[.]" Management prerogative cannot justify violation of law or the pursuit of any arbitrary or malicious motive.

4. **ID.; ID.; ID.; FOR REDUNDANCY OR RETRENCHMENT TO BE A VALID GROUND FOR TERMINATION OF WORK, THE EMPLOYER MUST GIVE SEPARATION PAY TO THE AFFECTED EMPLOYEES AND MUST ALSO SERVE A WRITTEN NOTICE ON BOTH THE EMPLOYEES AND THE DEPARTMENT OF LABOR AND EMPLOYMENT AT LEAST ONE (1) MONTH BEFORE THE INTENDED DATE OF REDUNDANCY OR RETRENCHMENT.—** Article 298 of the Labor Code, as amended, provides for the x x x legal grounds for an employer's termination of its employees' services x x x. The company can resort to any of these authorized causes to "protect and preserve [its] viability and ensure [its] survival." Under Article 298, for there to be valid termination of work based on an authorized cause, several procedural and substantive requirements must be complied with. x x x. For either redundancy or retrenchment, the law requires that the employer give separation pay to the affected employees. The employer must also serve a written notice on both the employees and the Department of Labor and Employment at least one (1) month before the intended date of redundancy or retrenchment.

5. **ID.; ID.; ID.; ID.; FOR PURPOSES OF COMPLYING WITH THE 30-DAY PRIOR NOTICE REQUIREMENT, THE LAW ONLY LOOKS AT WHEN THE NOTICE WAS GIVEN.—** Dawal, *et al.* claim that PAL violated the 30-day prior notice because "they were required to work and render services to PAL up to the last day of their employment[.]" This argument is *non sequitur*. For purposes of complying with the rule on prior notice, the law only looks at when the notice was given.

6. **ID.; ID.; ID.; ID.; A HEARING IS AN UNNECESSARY CONDITION IN DETERMINING THE LEGALITY OF DISMISSAL DUE TO REDUNDANCY OR RETRENCHMENT, AS THE EMPLOYER HAS NO OBLIGATION TO PROVIDE THE EMPLOYEES THE**

OPPORTUNITY TO DISPROVE THE BUSINESS AND FINANCIAL REASONS FOR TERMINATION. — For termination of employment due to an authorized cause, the employee is dismissed because that management exercised its business prerogative, not because the employee was at fault. As a rule, hearing is an unnecessary condition in determining the legality of dismissal due to redundancy or retrenchment. PAL's dismissal of Dawal, *et al.*'s services did not arise from their fault or negligence, such as serious misconduct, willful disobedience, or gross and habitual neglect of duties. Otherwise, this would have compelled them to be heard to disprove the allegations. There is no right to be heard in dismissal for an authorized cause. In terminating the employees' services due to the installment of labor-saving devices, redundancy, retrenchment to prevent losses, or closure of business, the employer has no obligation to provide the employees the opportunity to disprove the business and financial reasons for termination. Where there is no allegation of employee misconduct or negligence that amounts to a just cause for dismissal under Article 282 of the Labor Code, the employee concerned has no right to be heard prior to their dismissal.

7. **ID.; ID.; ID.; REDUNDANCY AND RETRENCHMENT, DISTINGUISHED.—** In *Sebuguero v. National Labor Relations Commission,* this court differentiated redundancy from retrenchment: Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is . . . an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business[.]

8. **ID.; ID.; ID.; REDUNDANCY; REQUIRES GOOD FAITH IN ABOLISHING THE REDUNDANT POSITION, AND TO ESTABLISH GOOD FAITH, THE EMPLOYER MUST PROVIDE SUBSTANTIAL PROOF THAT IT IS OVERMANNED.—** Redundancy requires good faith in

abolishing the redundant position. To establish good faith, the company must provide substantial proof that it is overmanned. This is absent here. In General *Milling Corporation v. Viajar*, we have held that the act of hiring new employees while firing the old ones "negat[es] the claim of redundancy." When PAL spun off the engineering and maintenance facilities, it also created a *new* engineering department called the Technical Services Department. Moreover, after it fired the affected employees, PAL offered to rehire the same retrenched personnel as new employees. The Court of Appeals found that there was "availability of work in PAL [and this] belie[s] its claim that [PAL] has become over manned[.]" x x x. PAL's acts effectively defeated its employees' security of tenure and seniority rights. The presence of bad faith cancels out any claim of redundancy.

9. **ID.; ID.; ID.; DISMISSAL ON GROUND OF RETRENCHMENT, CRITERIA THAT MUST BE MET TO BE VALID.—** PAL invokes retrenchment to justify its dismissal of Dawal, *et al.'s* services. Retrenchment is the employer's cutting down of personnel to reduce the costs of business operations and avert business losses. As a rule, this court will respect management prerogative to retrench where there is "faithful compliance . . . with the substantive and procedural requirements laid down by law and jurisprudence." There are several guidelines that PAL should observe to validly dismiss Dawal, *et al*. due to retrenchment. Among others, the following are the four (4) criteria that the employer must meet: *Firstly,* the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. *Secondly*, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree or urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly,* be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other cost other than labor costs. An employer who, for instance, lays off substantial

numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," [severance packages] can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — *e.g.,* reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting. *Lastly,* but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.

10. **ID.; ID.; ID.; ID.; TO JUSTIFY RETRENCHMENT, THE EMPLOYER MUST PROVE BY CLEAR AND SATISFACTORY EVIDENCE THAT THERE ARE EXISTING OR IMMINENT SUBSTANTIAL, SERIOUS, ACTUAL AND REAL BUSINESS LOSSES, NOT MERELY *DE MINIMIS*. —**The employer has the burden of showing by clear and satisfactory evidence that there are existing or imminent substantial losses, and that "legitimate business reasons justif[y] . . . retrenchment." Mere showing of incurred or expected losses does not automatically justify retrenchment. The business losses must be "substantial, serious, actual[,] and real," not merely *de minimis*.

11. **ID.; ID.; ID.; ID.; THE LIBERAL APPLICATION RULE CAN BE INVOKED BY THE WORKERS THEMSELVES, NOT THE MANAGEMENT OR EMPLOYER. —** Both Rule 1, Section 2 of the NLRC Rules and Article 221 of the Labor Code cannot be read in isolation; rather, they should be understood in harmony with Article 4 of the Labor Code. Article 4 states that all doubts regarding the "implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, *shall be resolved in favor of labor.*" In addition, Rule I, Section 2 explicitly states that the liberal construction shall be used to "carry out the objectives"

of the 1987 Constitution and the Labor Code. Both the Organic Law and the Labor Code seek to provide full protection to labor. In *Bunagan v. Sentinel Watchman & Protective Agency, Inc.*, we have held that the liberal application in labor cases applies insofar as it gives life to the "mandate that the workingman's welfare should be the primordial and paramount consideration." x x x. Employees almost always have no possession of the company's financial statements. For reasons of equity, it is not the management or employer, *i.e*., PAL, but the workers themselves, *i.e*., Dawal, *et al*., who can invoke the liberal interpretation rule here.

12. **ID.; ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING THE VALIDITY OF ITS TERMINATION DUE TO ALLEGED BUSINESS LOSSES; PHOTOCOPIED FINANCIAL STATEMENTS SHOULD NOT BE CONSIDERED AT FACE VALUE, ESPECIALLY ABSENT AN AFFIDAVIT OF A WITNESS, WHERE THE SAME WOULD BE USED TO JUSTIFY THE RETRENCHMENT OF EMPLOYEE'S LIVELIHOOD. —** [C]ontrary to PAL's claim, the burden is not on Dawal, *et al.* to "[move] for the submission of the original or authenticated copies of the documents." Rather, it is on PAL to *prove* before this court the validity of its termination due to alleged business losses. x x x. With PAL's quick access to its own documents, as well as its heavy burden of proving the validity of retrenchment, this court is bewildered as to how, at every stage of the proceedings, PAL failed to produce the original or certified true copies of the evidence it primarily relies on. Aware of Dawal, *et al.'s* objection even at the beginning of this case, PAL should have taken steps to dispel any doubts surrounding the questioned photocopies. The non-litigious nature of the proceedings before the Labor Arbiter and the National Labor Relations Commission makes it easy for the employer to simply present any document, genuine or not. This gives all the more reason for the photocopied financial statements to not be considered at face value, especially absent an affidavit of a witness, where these would be used to justify the retrenchment of employee's livelihood.

13. **ID.; ID.; ID.; ID.; THE RETRENCHMENT MUST NOT ONLY BE REASONABLY NECESSARY TO AVERT SERIOUS BUSINESS LOSSES, BUT IT MUST ALSO BE**

MADE IN GOOD FAITH AND WITHOUT ILL MOTIVE. — Granted that PAL suffered serious and actual business losses, it must still show that the retrenchment was reasonably necessary to effectively prevent the actual or imminent losses. It is not enough for a company to simply incur business losses or go through rehabilitation to justify retrenchment. While it can be argued that undergoing corporation rehabilitation evinces it substantial business losses, PAL must still prove all the other elements for a valid retrenchment. Article 298 of the Labor Code requires that the "retrenchment to prevent losses" should not be used to "circumven[t] the provisions of" the Labor Code. Stated otherwise, the retrenchment must not only be "reasonably necessary" to avert serious business losses; it must also be made in good faith and without ill motive.

14. **ID.; ID.; ID.; ID.; FOR THERE TO BE A VALID RETRENCHMENT, THE EMPLOYER MUST EXERCISE ITS MANAGEMENT PREROGATIVE IN GOOD FAITH FOR THE ADVANCEMENT OF ITS INTEREST AND NOT TO DEFEAT OR CIRCUMVENT THE EMPLOYEES' RIGHT TO SECURITY OF TENURE.—** PAL has not shown proof that retrenchment was indeed the remedy of last resort, and that it sought for retrenchment only after it had pursued all viable options to no avail. [P]AL has "failed to explain how the rehiring of the affected employees in the spin-off could possibly alleviate PAL's financial difficulty." For there to be a valid retrenchment, the employer must exercise its management prerogative "in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure[.]" x x x. PAL's job offer is unmistakably for lower positions, "with substantially diminished salaries and benefits[,]" and conditioned on their being considered as new employees. Thus, instead of providing utmost security and reward to PAL's enduring and loyal employees, PAL's acts effectively circumvented their security of tenure and seniority rights.

15. **ID.; ID.; ID.; ID.; DISMISSAL OF THE EMPLOYEE IS UNJUSTIFIED, ILLEGAL AND OF NO EFFECT WHERE THE EMPLOYER ACTED IN BAD FAITH, AND FAILED TO SUFFICIENTLY AND CONVINCINGLY ESTABLISH THE GROUNDS FOR TERMINATION.—** This court agrees with the Labor Arbiter and the Court of Appeals that there is

no reasonable necessity for the retrenchment to "prevent any substantial and actual losses." Moreover, PAL failed to prove "any degree of urgency to implement such retrenchment." Indeed, if retrenchment were necessary to forestall serious business losses, PAL should not have offered to rehire the dismissed employees, especially after it had already given them generous separation benefits. x x x .Considering that PAL acted in bad faith and that the grounds for termination were "not sufficiently and convincingly established," its dismissal of Dawal, *et al.'*s services is therefore unjustified, illegal, and of no effect.

16. **ID.; ID.; ID.; ID.; ACCEPTING SEPARATION PAY DOES NOT ESTOP THE EMPLOYEES FROM QUESTIONING THEIR ILLEGAL DISMISSAL, BUT THE SEPARATION PAY ALREADY RECEIVED WILL BE SUBTRACTED FROM MONETARY AWARDS.—** Accepting separation pay does not estop Dawal, *et al.* from questioning their illegal dismissal. Accepting the amount of separation pay, as stated in Dawal, *et al.*'s respective Release, Waiver and Quitclaim, does not prevent them from filing a complaint for illegal dismissal. The law looks at quitclaims and releases with disfavor. [T]he reason why quitclaims [are] commonly frowned upon as contrary to public policy, and why they are held to be ineffective to bar claims for the full measure of the workers' legal rights, is the fact that the employer and the employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of a job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not have waived any of their rights. x x x. Nevertheless, to prevent undue prejudice to PAL, the separation pay already received by Dawal, *et al.*, "as consideration for signing the quitclaims[,]" must be subtracted from their individual monetary awards.

17. **ID.; LABOR RELATIONS; UNFAIR LABOR PRACTICE; THE UNION HAS THE BURDEN TO PROVE BY SUBSTANTIAL EVIDENCE, ITS ALLEGATION OF UNFAIR LABOR PRACTICE. —** We agree with the Court of Appeals that there was not enough evidence to prove that

PAL committed unfair labor practices. x x x. In *Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU v. Sulpicio Lines, Inc.*, we have held that the union has the burden to prove, by substantial evidence, its allegation of unfair labor practice. Neither PALEA nor Dawal, *et al*. have discharged this burden.

18. **ID.; ID.; ID.; FOR THERE TO BE UNFAIR LABOR PRACTICE, THE VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT MUST BE GROSS AND MUST BE RELATED TO THE AGREEMENT'S ECONOMIC PROVISIONS. —** Dawal, et al. assert that PAL disregarded the following provisions of the PAL-PALEA Collective Bargaining Agreement: Section 1 (Security of Tenure), Section 7 (Lay-off), and Section 10 (Seniority, Promotion, Job Reclassification, Job Progression and Demotion) of Article III on Job Security. These allegedly amount to unfair labor practices under Article 259 (i) of the Labor Code. Dawal, *et al.* are mistaken. x x x. In *Silva v. National Labor Relations Commission*, we held that for there to be unfair labor practice, the violation of the Collective Bargaining Agreement must be gross and must be related to the Agreement's economic provisions. Here, Dawal, *et al*. charge PAL of violating the provisions on Job Security in the Collective Bargaining Agreement, which are non-economic in nature. Thus, PAL's acts do not constitute unfair labor practice under Article 259(i) of the Labor Code.

19. **ID.; ID.; TERMINATION OF EMPLOYMENT; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT WITH FULL BACKWAGES, AND DAMAGES IF DISMISSAL WAS DONE IN BAD FAITH.—** The Court of Appeals correctly ruled that Dawal, *et al.* are entitled to reinstatement with full backwages or additional separation pay plus backwages. PAL failed to prove all the requisites for a valid dismissal due to retrenchment. Whether there was redundancy or retrenchment, or redundancy caused by retrenchment, this court agrees with the Court of Appeals' and the Labor Arbiter's finding that PAL illegally terminated the services of Dawal, *et al*. x x x. Where reinstatement is not possible, an employee is entitled to separation pay in addition to one's monetary claims. Damages may also be awarded if the dismissal was done in bad faith. Thus, in light of PAL's illegal dismissal of their services, Dawal, *et al.* are entitled to

immediate reinstatement to their former positions "without loss of seniority rights and other privileges[,]" as well as to their full backwages computed from the time PAL withheld their compensation up to the time of their actual reinstatement. Where reinstatement is not possible, they should be given the mentioned monetary awards in addition to the separation pay.

20. **ID.; ID.; ID.; MORAL, NOMINAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND INTEREST AT THE LEGAL RATE, AWARDED TO THE ILLEGALLY DISMISSED EMPLOYEES IN CASE AT BAR.—** The awards for moral and exemplary damages are "sufficient to ease [Dawal, *et al.*'s] moral suffering by reason of their illegal dismissal." Failure to serve the 30-day prior notice on Dawal also makes PAL liable for an indemnity of ₱50,000.00 as nominal damages. Moreover, for having been compelled to litigate, Dawal, *et al.* are entitled to an award for reasonable attorney's fees, pursuant to Article 2208(7) of the Civil Code. Both the Labor Arbiter and the Court of Appeals found the amount equivalent to 10% of their total award to be reasonable. Finally, aside from reinstatement with backwages, illegally dismissed employees are entitled to interest at the legal rate. In view of our ruling in *Nacar v. Gallery Frames* and the existing temporary restraining order on the Court of Appeals Decision, the rate of legal interest shall be 6% per annum beginning from the date of promulgation of this judgment until fully paid.

APPEARANCES OF COUNSEL

Bienvenido T. Jamoralin, Jr. for petitioner.
Potenciano Flores, Jr. for Isagani Dawal, *et al.*

D E C I S I O N

LEONEN, *J.*:

The employer has the burden of proving that the dismissal of its employees is with a valid and authorized cause. The employer's failure to discharge this burden makes the dismissal illegal.

This resolves consolidated Petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure. The Petition[1] docketed as G.R. No. 173921 was filed by Philippine Airlines, Inc. (PAL), while the Petition[2] docketed as G.R. No. 173952 was filed by Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago (Dawal, *et al*.). Both Petitions are offshoots of the Court of Appeals Sixth Division's Decision in CA-G.R. SP No. 73030.[3]

In its July 21, 2004 Decision,[4] the Court of Appeals reinstated with modifications the Labor Arbiter's Decision dated September 7, 2001, and annulled and set aside the February 28, 2002 Decision[5] and June 20, 2002 Resolution[6] of the National Labor Relations Commission.[7]

The Court of Appeals found that Dawal, *et al*. were illegally dismissed.[8] It ordered PAL to reinstate Dawal, *et al*.[9] to the equivalent of their former positions[10] with full backwages.[11]

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[1] *Rollo* (G.R. No. 173921), pp. 60-99.

[2] *Rollo* (G.R. No. 173952), pp. 10-76.

[3] *Rollo* (G.R. No. 173921), p. 62; *rollo* (G.R. No. 173952), p. 14.

[4] *Rollo* (G.R. No. 173921), pp. 104-122. The Decision was penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ruben T. Reyes (Chair) and Jose C. Reyes Jr. of the Sixth Division.

[5] *Rollo* (G.R. No. 173952), pp. 175-190. The Decision was penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo of the Third Division.

[6] *Id*. at 191-192. The Resolution was penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo of the Third Division.

[7] *Rollo* (G.R. No. 173921), pp. 120-121, Court of Appeals Decision. The Labor Arbiter was Francisco A. Robles.

[8] *Id*. at 117.

[9] *Rollo* (G.R. No. 173952), p. 267, PALEA and Dawal, *et al.*'s Amended Complaint and Position Paper. Dawal started working for PAL on September 1, 1972, Concepcion on September 17, 1979, and Sinobago on July 1, 1983.

[10] *Rollo* (G.R. No. 173921), p. 120, Court of Appeals Decision.

[11] *Id*. at 119.

If there were no equivalent positions for Dawal, *et al.* to fill in, PAL was ordered to pay their full backwages[12] on top of the separation pay already given.[13]

In addition, the Court of Appeals directed PAL to pay attorney's fees equivalent to 10% of the total monetary award.[14]

However, unlike the Labor Arbiter, the Court of Appeals found that PAL was not guilty of unfair labor practice and reduced the award for moral and exemplary damages.[15] The dispositive portion of the Decision reads as follows:

> **WHEREFORE,** the instant petition is **GRANTED.** The assailed decision and resolution of the National Labor Relations Commission in NLRC NCR CN 30-12-14858-00 NLRC NCR CN 30-02-00842-01 CA No. 030195-01 are **ANNULLED** and **SET ASIDE.** The 07 September 2001 decision of Labor Arbiter Francisco A. Robles is hereby ordered **REINSTATED,** but insofar as the petitioners Isagani Dawal, Lorna Concepcion and Bonifacio Sinobago are considered, **WITH MODIFICATIONS,** to read:
>
> > "**WHEREFORE,** premises considered, judgment is hereby rendered in favor of herein complainants and against the respondents:
> >
> > (1) Ordering the respondents to reinstate immediately the herein complaints [sic] Isagani Dawal, Lorna Concepcion and Bonifacio Sinobago to positions equivalent to their former positions without loss of seniority rights and other benefits upon receipt of this Decision;
> >
> > (2) Ordering the respondents to pay herein complaints [sic] Isagani Dawal, Lorna Concepcion and Bonifacio Sinobago their full backwages, based on their last salary received, other privileges and

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[12] *Id*.

[13] *Id*. at 121.

[14] *Id*.

[15] *Id*. at 1033 and 1035, Dawal, *et al.*'s Memorandum.

benefits or their monetary equivalent, computed from the date of their dismissal on September 1, 2000 until their reinstatement; based on the last salary received by the said employees. As of July 31, 2001, complainants' backwages are in the amounts stated and specified below:

a. ISAGANI DAWAL – ₱17,170.00 x 12 mos. from Sept. 1, 2000 up to July 31, 2001 = ₱206,040.00

b. LORNA CONCEPCION – ₱22,540.00 x 12 mos. from Sept. 1, 2000 up to July 31, 2001. = ₱270,480.00

c. BONIFACIO SINOBAGO – ₱21,675.00 x 12 mos. from Sept. 1, 2000 up to July 31, 2001 = ₱260,100.00

It should be stated and understood that the backwages of the complainants shall be subject to further computation up to the reinstatement of the said employees.

(3) In the event that there are no equivalent positions to which the aforenamed complainants may be reinstated, the respondents are ordered to pay, in addition to the separation pay already paid to complainants Isagani Dawal, Lorna Concepcion and Bonifacio Sinobago, their full backwages, based on their last salary received, other privileges and benefits or their monetary equivalent, computed from their dismissal on 01 September 2000 until their supposed actual reinstatement;

(4) Ordering the respondents to pay the said complainants ₱50,000.00 each as moral damages and ₱10,000.00 each as exemplary damages; and

(5) Ordering the respondents to pay the said complainants attorney's fees equivalent to ten percent (10%) of their respective total monetary award.

All other claims are hereby dismissed."

SO ORDERED.[16]

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[16] *Id*. at 120-122, Court of Appeals Decision.

In its July 28, 2006 Resolution,[17] the Court of Appeals Special Former Sixth Division denied PAL's Motion for Reconsideration and Dawal, *et al.*'s Motion for Partial Reconsideration.[18]

On September 25, 2006, this court issued a temporary restraining order enjoining Dawal, *et al.* or their representatives from implementing the Court of Appeals' July 21, 2004 Decision.[19]

PAL filed its Memorandum[20] on April 23, 2008, while Dawal, *et al.* filed their Memorandum[21] on May 5, 2008.

I

On September 1, 2000, PAL severed the employment of Isagani Dawal (Dawal), Lorna Concepcion (Concepcion), and Bonifacio Sinobago (Sinobago).[22] Dawal served as Chief Storekeeper, Concepcion as Master Avionics Mechanic A, and Sinobago as Aircraft Master "A" Mechanic.[23] Until their dismissal from work, they were regular rank-and-file employees of PAL and "bona fide members"[24] of the Philippine Airlines Employees' Association (PALEA).[25]

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[17] *Id*. at 125-129. The Resolution was penned by Presiding Justice Ruben T. Reyes and concurred in by Associate Justices Rodrigo V. Cosico and Jose C. Reyes, Jr. of the Special Former Sixth Division.

[18] *Id*. at 129.

[19] *Rollo* (G.R. No. 173952), p. 585, Supreme Court Resolution dated September 25, 2006.

[20] *Rollo* (G.R. No. 173921), pp. 988-1029.

[21] *Id*. at 1030-1126.

[22] *Id*. at 106, Court of Appeals Decision.

[23] *Id.*

[24] *Id*. at 415, PALEA and Dawal, *et al*.'s Reply.

[25] See *Philippine Airlines Employees' Association v. Hon. Ferrer-Calleja,* 245 Phil. 382, 384 (1988) [Per *J.* Griño-Aquino, First Division]. PALEA is the exclusive collective bargaining unit of PAL's ground rank-and-file employees.

When PAL was privatized in 1993, the new owners acquired PAL's alleged aging[26] fleet and overly manned workforce.[27] PAL sought to expand its business through a five-year re-fleeting program.[28] It began implementing the re-fleeting program in July 1993.[29] In 1997, the Asian Financial Crisis devalued the peso against the dollar. PAL claims that this strained its financial resources. It counts its losses to ₱750 million in December 1997 alone.[30]

In addition, the Airline Pilots Association of the Philippines[31] staged a three-week strike on June 5, 1998.[32] PAL claims that this caused the "further deterioration of [the company's] financial condition[.]"[33] PAL implemented a massive retrenchment program on June 15, 1998.[34]

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[26] *Rollo* (G.R. No. 173921), p. 992, PAL's Memorandum.

[27] *Id*.

[28] *Rollo* (G.R. No. 173952), p. 197, Labor Arbiter's Decision.

[29] *Rollo* (G.R. No. 173921), p. 992, PAL's Memorandum. PAL claims that it cost at least US$4 billion, based on a peso-dollar exchange rate of ₱26.00 to US$1.00.

[30] *Id*. at 993.

[31] *Id*. Airline Pilots Association of the Philippines (ALPAP) is the exclusive collective bargaining unit of PAL pilots.

[32] *Id*. at 992-994. According to PAL, ALPAP and PALEA staged "strikes" (*Id*. at 993) more than once, thus aggravating its "heavy losses" (*Id*.). However, nowhere in the record has PAL shown proof or mentioned any detail of the alleged "strikes" anytime from June 1997 (Asian Financial Crisis) to June 19, 1998 (when PAL filed for corporate rehabilitation). In any case, this court takes judicial notice of ALPAP's strike on June 5, 1998 (See *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.,* 665 Phil. 679, 682 (2011) [Per *J.* Del Castillo, First Division]). This court also takes judicial notice that PALEA conducted a four-day strike on July 22, 1998, which, however, came only *after* PAL already filed for corporate rehabilitation (See *Rivera v. Hon. Espiritu,* 425 Phil. 169, 175 (2002) [Per *J.* Quisumbing, Second Division]).

[33] *Rollo* (G.R. No. 173921), p. 1048, Dawal, *et al.*'s Memorandum.

[34] *Id.* at 994, PAL's Memorandum. On June 15, 1998, PAL retrenched 5,000 of its employees, including 1,400 of its cabin crew, to take effect

On June 19, 1998, PAL filed for corporate rehabilitation before the Securities and Exchange Commission.[35]

A year after, on February 18, 1999, PAL President and Chief Operating Officer Avelino L. Zapanta[36] allegedly wrote to PALEA, informing the latter of the "new management's plan to sel1"[37] the Maintenance and Engineering Department.[38]

On June 7, 1999, the Securities and Exchange Commission approved[39] PAL's Amended and Restated Rehabilitation Plan (Rehabilitation Plan).[40] The Rehabilitation Plan stated that PAL's "non-core activities . . . have the potential to be sold off."[41] These included the Catering and the Maintenance and Engineering Departments.[42]

On June 15, 1999, PAL allegedly met with PALEA, during which PAL President and Chief Operating Officer Avelino L. Zapanta promised that "all employees [would] be taken cared [sic] of."[43] He also agreed to ensure that there would be no economic dislocation and diminution of benefits for the employees.[44] He added that "job security [was] well[-]protected

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on July 15, 1998 (See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.,* 617 Phil. 687, 691-692 (2009) [Per *J.* Ynares-Santiago, Special Third Division]).

[35] *Rollo* (G.R. No. 173921), p. 108, Court of Appeals Decision.

[36] *Id*. at 287, PAL President Avelino Zapanta's letter dated March 24, 2000, addressed to the PALEA Executive Board.

[37] *Id*. at 995, PAL's Memorandum.

[38] *Id*.

[39] *Rollo* (G.R. No. 173952), p. 198, Labor Arbiter's Decision.

[40] *Rollo* (G.R. No. 173921), pp. 224-250.

[41] *Id*. at 237, PAL's Amended and Restated Rehabilitation Plan, and 994, PAL's Memorandum.

[42] *Id*.

[43] *Id*. at 451, Minutes of the PAL-PALEA Meeting dated June 15, 1999.

[44] *Id*. at 451-452.

[and] that there [would] be a process of consultation between labor and management in the divestment of non-core business groups."[45]

On February 2000,[46] PALEA held a general election for its new officers.[47] Headed by PALEA President Jose T. Peñas III, the newly proclaimed officers included Dawal as Secretary.[48] However, the result of the election was contested.[49] On March 24, 2000, the new union leadership informed PAL of the election result and requested a courtesy call visit.[50] However, PAL refused to meet with them in light of pending election protests.[51]

Meanwhile, Lufthansa Technik Philippines, Inc. (Lufthansa) expressed its desire to purchase PAL's Maintenance and Engineering Department.[52] The Securities and Exchange Commission approved the sale to Lufthansa on March 24, 2000.[53]

Under Article XXIV, Section 4 of the 1995-2000 PAL-PALEA Collective Bargaining Agreement[54] and the Memorandum of

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[45] *Id*. at 452.

[46] *Id*. at 183, PALEA Commission on Election's Notice of Proclamation of Union Officers. The general elections of the Union were held on February 17, 21-22, and 23-24, 2000.

[47] *Rollo* (G.R. No. 173952), p. 270, PALEA and Dawal, *et al.*'s Amended Complaint and Position Paper.

[48] *Rollo* (G.R. No. 173921), p. 183, PALEA Commission on Election's Notice of Proclamation of Union Officers.

[49] *Id.* at 186, PAL President Avelino Zapanta's letter dated March 27, 2000, addressed to former PALEA Secretary Jose T. Peñas III.

[50] *Id.*

[51] *Id*. at 186, PAL President Avelino Zapanta's letter dated March 27, 2000, addressed to former PALEA Secretary Jose T. Peñas III; *rollo* (G.R. No. 173952), p. 205, Labor Arbiter's Decision.

[52] *Rollo* (G.R. No. 173921), p. 994, PAL's Memorandum.

[53] *Id*. at 281-282, SEC Order in SEC Case No. 06-98-6004, and 996, PAL's Memorandum.

[54] *Id*. at 1104, Dawal, *et al.'s* Memorandum.

Agreement[55] dated November 2, 1996, "[i]n case PAL deems it necessary to reorganize its corporate structure for the viability of its operations by forming joint ventures and *spin-offs,* PAL shall do so only after proper consultation with PALEA *within 45 days before implementation* of said reorganization[.]"[56]

No consultation meeting was held within 45 days prior to September 1, 2000.[57] When PAL turned down the courtesy call visit of the newly elected PALEA officers, the latter refused to commence the consultation meeting "until PAL management respects"[58] their alleged election.[59]

To make up for this, PAL issued primers to "address questions regarding the spin-off."[60] The primers stated that the spin-off aimed to reduce PAL's costs, improve its performance and efficiency, and pre-pay its creditors, among others.[61] PAL also allegedly conducted *ugnayan* sessions with its employees to inform them of the spin-off.[62]

According to Dawal, *et al.*, PAL announced the planned spin-off informally and belatedly, reaching them sometime in April 2000.[63] PALEA members signed and executed Resolution No. 01-1, Series of 2000, rejecting the spin-off.[64]

Under the spin-off program, the following PAL employees were to be "retrench[ed]"[65] from work: those from the Maintenance

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[55] *Id*. at 283, PAL-PALEA Memorandum of Agreement.

[56] *Id*., Emphasis supplied.

[57] *Rollo* (G.R. No. 173952), p. 206, Labor Arbiter's Decision.

[58] *Rollo* (G.R. No. 173921), p. 187, PALEA's letter dated March 30, 2000, addressed to PAL President Avelino Zapanta.

[59] *Id*.

[60] *Id*. at 996, PAL's Memorandum.

[61] *Id*. at 1051-1052, Dawal, *et al.'s* Memorandum.

[62] *Id*. at 996-997, PAL's Memorandum.

[63] *Id*. at 1041, Dawal, *et al.'s* Memorandum.

[64] *Id*.

[65] *Id*. at 307, PAL President Avelino Zapanta's letter dated July 20, 2000, addressed to PALEA.

and Engineering Department, and those from Logistics and Purchasing, Financial Services, and Information Services Departments doing purely maintenance and engineering-related tasks, whose work would be absorbed by Lufthansa.[66]

After signing a Release, Waiver, and Quitclaim,[67] Dawal, Concepcion, Sinobago, and other affected employees were given generous separation packages[68] less their outstanding obligations or accountabilities.[69] Dawal received ₱590,511.90, Concepcion received ₱588,575.75, and Sinobago received ₱411,539.98.[70] PAL also offered work for the employees who were not absorbed by Lufthansa.[71]

On July 20, 2000, PAL issued a Notice of Separation to all the affected employees, containing either of the following letters: (1) offer of new employment from Lufthansa, should it choose to hire the affected employees; or (2) PAL's offer of employment for a lower rank or job grade and for a lesser salary,[72] should Lufthansa not choose to hire the affected employees.[73]

On September 1, 2000, in light of the spin-off of PAL's Maintenance and Engineering Department and the scheduled start of operations of Lufthansa,[74] all affected employees were relieved from their positions.[75]

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[66] *Id*. at 109.

[67] *Id*. at 348-350.

[68] *Id*. at 1012, PAL's Memorandum.

[69] *Id*. at 109, Court of Appeals Decision; 341, PAL Human Resources Department's letter to Dawal; and 348-350, Release, Waiver and Quitclaim.

[70] *Id*. at 349-350, Release, Waiver and Quitclaim.

[71] *Id*. at 109, Court of Appeals Decision; and 1052, Dawal, *et al.*'s Memorandum.

[72] *Rollo* (G.R. No. 173952), p. 195, Labor Arbiter's Decision.

[73] *Rollo* (G.R. No. 173921), p. 1049, Dawal, *et al*.'s Memorandum.

[74] *Id*. at 307, PAL President Avelino Zapanta's letter dated July 20, 2000, addressed to PALEA.

[75] *Id*. at 1046, Dawal, *et al.*'s Memorandum.

When PAL spun off the engineering and maintenance facilities, it also created a new engineering department, called the Technical Services Department, allegedly "in compliance with aviation regulations requiring airline companies to maintain an engineering department."[76]

In a letter[77] dated September 7, 2000,[78] the (protested) new PALEA President Jose T. Peñas III submitted a list of economic and non-economic proposals for the renewal of the 1995 Collective Bargaining Agreement,[79] which would expire on September 30, 2000.[80]

PALEA and Dawal, *et al.* filed before the Labor Arbiter a Complaint[81] dated January 31, 2001 for unfair labor practices and illegal dismissal.[82] Their labor suit[83] was consolidated with a similar complaint filed against PAL.[84]

In his Decision[85] dated September 7, 2001, Labor Arbiter Francisco A. Robles found PAL guilty of illegal dismissal.[86] PAL was ordered to reinstate Dawal, *et al.* to their "former

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[76] *Rollo* (G.R. No. 173952), p. 367, PAL's Consolidated Rejoinder.

[77] *Rollo* (G.R. No. 173921), pp. 200-203, PALEA Letter dated September 7, 2000

[78] *Id*. at 200. PAL received the letter on September 13, 2000.

[79] *Id*. at 200-203.

[80] *Id*. at 1110, Dawal, *et al.*'s Memorandum.

[81] *Rollo* (G.R. No. 173952), pp. 214-218.

[82] *Id*. at 217.

[83] *Rollo* (G.R. No. 173921), pp. 132-181, PALEA and Dawal, *et al.*'s Amended Complaint and Position Paper. The case was docketed as NLRC-NCR Case No. 30-02-00842-01.

[84] *Id*. at 204, PAL's Position Paper; 351, PAL's Consolidated Reply; and 444, PAL's Consolidated Rejoinder. The cases docketed as NLRC-NCR Case No. 30-02-00842-01 and NLRC-NCR (South) No. 30-12-04058-00 were consolidated.

[85] *Rollo* (G.R. No. 173952), pp. 193-213.

[86] *Id*. at 200-204.

position[s] without loss of seniority rights and privileges and to pay them full backwages[.]"[87] The Labor Arbiter also granted moral damages amounting to ₱200,000 and exemplary damages amounting to ₱100,000 for each of them, after finding that PAL was guilty of unfair labor practice, and attorney's fees.[88]

In its February 28, 2002 Decision, the National Labor Relations Commission reversed and set aside the Labor Arbiter's Decision *in toto*.[89] The National Labor Relations Commission stated that PAL validly exercised its management prerogative[90] and that PAL held the required consultations with PALEA much earlier than 45 days.[91]

Dawal, *et al.* filed an appeal before the Court of Appeals.[92] On July 21, 2004, the Court of Appeals Sixth Division rendered the Decision reversing the judgment of the National Labor Relations Commission and reinstating the September 7, 2001 Decision of the Labor Arbiter.[93] The Court of Appeals ruled that PAL's dismissal of Dawal, *et al.*'s services was illegal,[94] and that PAL actually invoked redundancy, not retrenchment.[95] The Court of Appeals struck out the part of the decision finding PAL guilty of unfair labor practice[96] and reduced the award for moral and exemplary damages.[97]

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[87] *Rollo* (G.R. No. 173921), p. 1054, Dawal, *et al*.'s Memorandum.

[88] *Rollo* (G.R. No. 173952), pp. 212-213, Labor Arbiter's Decision.

[89] *Id*. at 189, National Labor Relations Commission Decision.

[90] *Id*. at 182-185.

[91] *Id*. at 186.

[92] *Rollo* (G.R. No. 173921), p. 104, Court of Appeals Decision.

[93] *Id*. at 120.

[94] *Id*. at 117.

[95] *Id*. at 116.

[96] *Id*. at 120.

[97] *Id*. at 119.

Following this, Dawal, *et al.* moved for partial reconsideration.[98] PAL also moved for reconsideration.[99] The Court of Appeals Special Former Sixth Division issued the Resolution dated July 28, 2006 denying both Motions.[100]

On August 31, 2006, PAL filed its Petition for Review on Certiorari docketed as G.R. No. 173921.[101] It reiterated its position that the termination of its employees' work was legal, both on substantive and procedural grounds.[102]

On September 18, 2006, Dawal, *et al.* filed their own Petition for Review on Certiorari docketed as G.R. No. 173952[103] arguing that PAL is guilty of unfair labor practices and the Court of Appeals erroneously reduced the award for moral and exemplary darnages.[104] PAL filed its Cornrnent[105] on October 20, 2006. Dawal, *et al*. failed to file a reply, so this court deemed the filing of the reply waived.[106]

On September 24, 2007, Dawal, *et al.* filed their Comment,[107] on PAL's Petition, maintaining that their dismissal from employment was illegal and could not be justified as retrenchment. Hence, they should be awarded moral and exemplary damages.[108]

In the Resolution[109] dated September 11, 2006, this court consolidated the Petitions.

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[98] *Id*. at 125, Court of Appeals Resolution.

[99] *Id*.

[100] *Id*. at 129.

[101] *Id*. at 60, Petition for Review.

[102] *Id*. at 75-94.

[103] *Rollo* (G.R. No. 173952), p. 10, Petition.

[104] *Id*. at 44.

[105] *Id*. at 595-612, PAL's Comment.

[106] *Id*. at 664, Supreme Court Resolution dated August 11, 2008.

[107] *Rollo* (G.R No. 173921), pp. 887-963.

[108] *Id*. at 942.

[109] *Rollo* (G.R No. 173952), p. 9, Supreme Court Resolution dated September 11, 2006.

PAL submitted its Memorandum[110] on April 23, 2008, while Dawal, *et al*. submitted their Memorandum[111] on May 5, 2008.

II

We resolve the following issues:

First, whether the termination of the employment of Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago was due to an authorized cause, and could be justified as redundancy or retrenchment;

Second, whether the proper procedure in the PAL-PALEA Collective Bargaining Agreement was followed; and

Lastly, whether Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago are entitled to monetary claims including claims for damages and attorney's fees, and whether Philippine Airlines, Inc. is guilty of unfair labor practice.

PAL posits that the spin-off was "impelled by compelling economic factors which endangered [its] existence and stability[.]"[112] It blames the Asian Financial Crisis and the strike for the heavy losses it incurred.[113] To prevent serious business losses, PAL spun off its Maintenance and Engineering Department to Lufthansa, resulting in the retrenchment of Dawal, *et al.*'s employment based on an authorized cause under Presidential Decree No. 442,[114] as amended, otherwise known as the Labor Code of the Philippines.

PAL claims that PALEA was fully aware of the company's decision.[115] The union members and officers "were able to ventilate

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[110] *Rollo* (G.R. No. 173921), pp. 988-1029.

[111] *Id*. at 1030-1126.

[112] *Id*. at 989, PAL's Memorandum.

[113] *Id*. at 993.

[114] A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice (1974).

[115] *Rollo* (G.R. No. 173921), p. 1011, PAL's Memorandum.

their views not just 45 days prior to implementation of the spin-off but much, much earlier."[116] PAL begins counting in February 1999, when it allegedly met with then PALEA President Alexander Barrientos[117] to explain the planned spin-off of the Department.[118] PAL also claims to have conducted consultation meetings with the outgoing PALEA Executive Board.[119]

Meanwhile, Dawal, *et al*. argue that PAL's deteriorating financial condition could not be proven, as PAL only presented "machine copies,"[120] not the original or "certified true copies"[121] of the audited financial statements[122] and other documents the company relied on.[123]

PAL also allegedly did not hold any consultation with PALEA.[124] The meetings with then PALEA President Alexander Barrientos were said to be inadequate, as he was "not the proper person to consult [with] at the time the spin-off took place."[125] Dawal, *et al.* claim that PAL "should have met and consulted with the duly elected president of the union, Mr. Jose [T. Peñas III.]"[126] Dawal, *et al.* also argue that the *ugnayan* or "monologue" sessions[127]

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[116] *Id*.

[117] *Id*. at 69, Petition for Review; and 286, PAL Executive Vice President and Chief Operating Officer Jaime J. Bautista's letter dated February 18, 1999 addressed to then PALEA President Alexander Barrientos.

[118] *Id*. at 1011, PAL's Memorandum.

[119] *Id*. at 1011-1012.

[120] *Id*. at 1079, Dawal, *et al.'s* Memorandum.

[121] *Id*. at 1085.

[122] *Id*.

[123] *Id*. at 1079.

[124] *Id*. at 1105-1106.

[125] *Id*. at 1106.

[126] *Id*.

[127] *Id*. at 1098.

were not the consultations contemplated under the PAL-PALEA Collective Bargaining Agreement.[128]

For PAL, moral damages should not be awarded because its action was not attended by bad faith.[129] There should also be no exemplary damages because the dismissal was not "wanton, oppressive or malevolent[.]"[130] PAL states that the spin-off was done to prevent losses, and this "cannot be deemed an unfair labor practice."[131]

On the other hand, Dawal, *et al.* claim that they are entitled to be paid ₱200,000 as moral damages and ₱100,000 as exemplary damages due to the illegal termination of their employment.[132] Dawal, *et al*. allege that PAL violated PAL-PALEA Collective Bargaining Agreement provisions on security of tenure,[133] procedures for a valid spin-off,[134] and seniority.[135] There was also union busting, as "nearly half of the union membership [was] terminated from work[.]"[136]

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[128] *Id*. at 1104-1106, Dawal, *et al.*'s Memorandum.

[129] *Id*. at 1022-1023, PAL's Memorandum.

[130] *Id*. at 1023.

[131] *Id*. at 1020.

[132] *Id*. at 1125, Dawal, *et al.*'s Memorandum. These are the original amounts of moral and exemplary damages awarded by the Labor Arbiter, which Dawal, *et al.* seek to be reinstated.

[133] *Id*. at 1108-1109. Article III, Section I of the PAL-PALEA Collective Bargaining Agreement provides:

Section 1. Security of tenure. No employee shall be subjected to disciplinary action or terminated from employment without just or authorized cause[.]

[134] *Id*. at 1104-1106.

[135] *Id*. at 1109-1110. Article III, Section 7 of the PAL-PALEA Collective Bargaining Agreement provides: Section 7. Lay-Off. Before the Company exercises its right to . . . retrench employees, the Company and [PALEA] shall meet not later than sixty (60) days befote the intended date of implementation of such retrenchment/lay-off, to discuss the details of the implementation of such action applying the principle of "last in, first out" in so far as practicable taking into consideration the department or area affected.

[136] *Id*. at 1110.

III

We sustain with modifications the Court of Appeals Decision reinstating that of Labor Arbiter Francisco A. Robles.

A petition for certiorari under Rule 45 of the Rules of Court can prosper only if the Court of Appeals, in deciding on a Rule 65 petition, fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion.[137]

The Court of Appeals' review of the contradictory findings of labor tribunals was proper as it was based on the evidence presented and done in the exercise of its certiorari jurisdiction.[138]

In reviewing a Rule 65 petition, the Court of Appeals properly reversed the National Labor Relations Commission's February 28, 2002 Decision, the latter having been rendered with grave abuse of discretion. After "tak[ing] judicial notice of [PAL's business situation,]"[139] the National Labor Relations Commission ruled that it was beyond the Labor Arbiter's power to determine whether there was a need or urgency for the spin-off.[140] The National Labor Relations Commission clearly ignored settled law and jurisprudence.

To begin with, the employer has the burden to prove the factual and legal basis for the termination of its employees.[141] PAL has the duty to establish, clearly and satisfactorily, all the elements for a valid retrenchment.[142] "Failure to do so 'inevitably results in a finding that the dismissal is unjustified.'"[143]

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[137] *Montoya v. Transmed Manila Corporation/Mr. Edilberto Ellena, et al.,* 613 Phil. 696, 707 (2009) [Per *J.* Brion, Second Division].

[138] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira,* 639 Phil. 1, 10-11 (2010) [Per *J.* Del Castillo, First Division].

[139] *Rollo* (G.R. No. 173952), p. 182, National Labor Relations Commission Decision.

[140] *Id*.

[141] *Somerville Stainless Steel Corporation v. National Labor Relations Commission,* 350 Phil. 859, 871-872 (1998) [Per *J.* Panganiban, First Division].

[142] *Id.*

[143] *Id*. at 872.

PAL's claim of management prerogative does not automatically absolve it of liability. Management prerogative is not unbridled and limitless. Nor is it beyond this court's scrutiny. Where abusive and oppressive, the alleged business decision must be tempered to safeguard the constitutional guarantee of providing "full protection to labor[.]"[144] Management prerogative cannot justify violation of law or the pursuit of any arbitrary or malicious motive.[145]

Article 298[146] of the Labor Code, as amended, provides for the following legal grounds for an employer's termination of its employees' services:

Art. 298. Closure of Establishment and Reduction of Personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.

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[144] CONST., Art. XIII, Sec. 3 provides:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[145] *Arabit v. Jardine Pacific Finance, Inc. (formerly MB Finance),* G.R. No. 181719, April 21, 2014, 722 SCRA 44, 61 [Per *J*. Brion, Second Division].

[146] Article 298 was formerly Article 283, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis in the original)

The company can resort to any of these authorized causes to "protect and preserve [its] viability and ensure [its] survival."[147] Under Article 298, for there to be valid termination of work based on an authorized cause, several procedural and substantive requirements must be complied with.

We begin with determining whether PAL complied with procedural requirements under Article 298.

For either redundancy or retrenchment, the law requires that the employer give separation pay to the affected employees.[148] The employer must also serve a written notice on both the employees and the Department of Labor and Employment at least one (l) month before the intended date of redundancy or retrenchment.

In this case, that PAL provided for separation pay "over and above the amount provided under the Labor Code"[149] is uncontested by the parties. The only issues raised on procedure are PAL's alleged failure to follow the 30-day prior notice and the supposed lack of hearing prior to dismissal.

Dawal, *et al.* claim that PAL violated the 30-day prior notice because "they were required to work and render services to PAL up to the last day of their employment[.]"[150] This argument is *non sequitur*. For purposes of complying with the rule on prior notice, the law only looks at when the notice was given.

PAL has shown proof of service on Concepcion and Sinobago. PAL sent a Notice of Separation dated July 14, 2000 to Concepcion, which she received on July 22, 2000,[151] and to

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[147] *Central Azucarera de la Carlota v. National Labor Relations Commission,* 321 Phil. 989, 995 (1995) [Per *J*. Kapunan, First Division].

[148] LABOR CODE, Art. 298.

[149] *Rollo* (G.R. No. 173921), p. 1021, PAL's Memorandum.

[150] *Id*. at 1103-1104, Dawal, *et al.*'s Memorandum.

[151] *Id*. at 342, PAL's Notice of Separation to Concepcion.

Sinobago, which he received on July 24, 2000.[152] Meanwhile, the Department of Labor and Employment received the Notice of Termination[153] and PAL's list of affected employees[154] on July 24, 2000. The termination of their services was effective on September 1, 2000, thereby fulfilling the 30-day prior notice. The same is not true for Dawal.

The records show that Dawal received the Notice of Separation only on August 31, 2000,[155] 29 days short of what the law requires.

PAL Messenger Nicomedes Romero alleges that he sent the Notice of Separation to Dawal on July 25, 2000 via registered mail.[156] This self- serving claim is unsupported by evidence. First, PAL could only show the Registry Return Receipt[157] dated July 26, 2000 addressed to Jaime Bautista, but not to Dawal. Second, the Affidavit[158] of Henedina Pecana, Administrative Assistant of PAL's Human Resources Department, bolsters the lack of timely notice to Dawal. Henedina Pecana states that she "received the corresponding Registry Return Receipts of the letters *except that of Mr. Isagani Dawal*."[159]

Dawal, *et al.* assail the lack of an adequate opportunity to defend themselves.[160] They claim that PAL "did not undertake prior administrative inquiry to give them a chance to refute their dismissal from work."[161] This argument is unavailing.

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[152] *Id.* at 343, PAL's Notice of Separation to Sinobago.

[153] *Id.* at 308-309.

[154] *Id*. at 310-333.

[155] *Id*. at 339, PAL's Notice of Separation to Dawal.

[156] *Id*. at 394, Nicomedes Romero's Affidavit.

[157] *Id*. at 337.

[158] *Id*. at 393.

[159] *Id*.

[160] *Id*. at 1096-1100, Dawal, *et al.*'s Memorandum.

[161] *Id*. at 1086.

For termination of employment due to an authorized cause, the employee is dismissed because the management exercised its business prerogative, not because the employee was at fault.

As a rule, hearing is an unnecessary condition in determining the legality of dismissal due to redundancy or retrenchment.[162] PAL's dismissal of Dawal, *et al.*'s services did not arise from their fault or negligence, such as serious misconduct, willful disobedience, or gross and habitual neglect of duties. Otherwise, this would have compelled them to be heard to disprove the allegations.

There is no right to be heard in dismissal for an authorized cause.[163] Interminating the employees' services due to the installment of labor-saving devices, redundancy, retrenchment to prevent losses, or closure of business, the employer has no obligation to provide the employees the opportunity to disprove the business and financial reasons for termination.[164]

Where there is no allegation of employee misconduct or negligence that amounts to a just cause for dismissal under Article 282[165]

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[162] *Wiltshire File Co., Inc. v. National Labor Relations Commission,* 271 Phil. 694, 706-707 (1991) [Per *J.* Feliciano, Third Division].

[163] LABOR CODE, Art. 298.

[164] *Wiltshire File Co., Inc. v. National Labor Relations Commission,* 271 Phil. 694,706-707 (1991) [Per *J.* Feliciano, Third Division].

[165] LABOR CODE, Art 282 provides:

Art. 282. Termination by employer. An employer may terminate an employment for any of the following just causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing.

of the Labor Code, the employee concerned has no right to be heard prior to their dismissal.[166]

IV

We now determine whether the substantive requirements for termination due to an authorized cause have been followed.

PAL invokes retrenchment to justify its acts.[167] The Labor Arbiter, however, found that PAL itself admitted that the dismissal "was not in the concept of retrenchment."[168] Moreover, according to the Court of Appeals, the ground PAL actually invokes is redundancy, not retrenchment.[169] PAL's workforce was allegedly overmanned after the spin-off of its maintenance and engineering facilities.[170] The Court of Appeals concludes that the "downsizing of [PAL's] operation[s] resulted in excess manpower[,]"[171] leading to redundancy.[172]

In *Sebuguero v. National Labor Relations Commission,*[173] this court differentiated redundancy from retrenchment:

> Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

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[166] *Wiltshire File Co., Inc. v. National Labor Relations Commission,* 271 Phil. 694, 706 (1991) [Per *J.* Feliciano, Third Division].

[167] *Rollo* (G.R. No. 173921), pp. 1002-1023, PAL's Memorandum.

[168] *Rollo* (G.R. No. 173952), p. 203, National Labor Relations Commission Decision.

[169] *Rollo* (G.R. No. 173921), p. 116, Court of Appeals Decision.

[170] *Id*.

[171] *Id*. at 111.

[172] *Id*. at 116.

[173] 318 Phil. 635 (1995) [Per *J*. Davide Jr., First Division].

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is . . . an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business[.][174] (Citations omitted)

Redundancy requires good faith in abolishing the redundant position.[175] To establish good faith, the company must provide substantial proof that it is overmanned.[176] This is absent here.

In *General Milling Corporation v. Viajar,*[177] we have held that the act of hiring new employees while firing the old ones "negat[es] the claim of redundancy."[178]

When PAL spun off the engineering and maintenance facilities, it also created a *new* engineering department called the Technical Services Department.[179] Moreover, after it fired the affected employees, PAL offered to rehire the same retrenched personnel as new employees.[180] The Court of Appeals found that there was "availability of work in PAL [and this] belie[s] its claim that [PAL] has become over manned[.]"[181] The Court of Appeals held:

[T]he dismissal of the petitioners who were later on offered reemployment . . . as new employees of PAL appears to be merely

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[174] *Id*. at 645-646.

[175] *General Milling Corporation v. Viajar,* G.R. No. 181738, January 30, 2013, 689 SCRA 598, 610 [Per *J*. Reyes, First Division].

[176] *Id*.

[177] G.R. No. 181738, January 30, 2013, 689 SCRA 598 [Per *J*. Reyes, First Division].

[178] *Id*. at 612.

[179] *Rollo* (G.R. No. 173952), p. 367, PAL's Consolidated Rejoinder.

[180] *Rollo* (G.R. No. 173921), p. 1016, PAL's Memorandum. Thirty-seven positions were offered in the new engineering department, while 196 retrenched employees who were not absorbed by Lufthansa Technik Philippines were offered jobs in various departments within PAL.

[181] *Id*. at 117, Court of Appeals Decision.

a *clever ruse . . . to deprive [Dawal, et al.], as well as the other employees similarly situated, of the privileges and benefits to which they are already entitled to* by reason of the length of services they have rendered to PAL[.][182] (Emphasis supplied)

PAL's acts effectively defeated its employees' security of tenure and seniority rights. The presence of bad faith cancels out any claim of redundancy.[183]

V

PAL invokes retrenchment to justify its dismissal of Dawal, *et al.*'s services. Retrenchment is the employer's cutting down of personnel to reduce the costs of business operations and avert business losses.[184] As a rule, this court will respect management prerogative to retrench where there is "faithful compliance . . . with the substantive and procedural requirements laid down by law and jurisprudence."[185]

There are several guidelines that PAL should observe to validly dismiss Dawal, *et al.* due to retrenchment. Among others, the following are the four (4) criteria that the employer must meet:

Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question. *Secondly,* the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for

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[182] *Id.* at 118.

[183] *General Milling Corporation v. Viajar,* G.R. No. 181738, January 30, 2013, 689 SCRA 598, 612 [Per *J.* Reyes, First Division].

[184] *Manila Polo Club Employees' Union (MPCEU) FUR-TUCP v. Manila Polo Club, Inc.,* GR. No. 172846, July 24, 2013, 702 SCRA 20, 29-30 [Per *J.* Peralta, Third Division].

[185] *Banana Growers Collective at Puyod Farms v. National Labor Relations Commission,* 342 Phil. 511, 520 (1997) [Per *J.* Romero, Second Division].

the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly,* be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.,* cut other costs other than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," [severance packages] can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — *e.g.,* reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of .marketing and advertising costs, *etc.* — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[186] (Citation omitted)

The employer has the burden of showing by clear and satisfactory evidence that there are existing or imminent substantial losses, and that "legitimate business reasons justif[y] . . . retrenchment."[187] Mere showing of incurred or expected losses does not automatically justify retrenchment.[188] The business

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[186] *Oriental Petroleum and Minerals Corporation v. Fuentes,* 509 Phil. 684, 694 (2005) [Per *J.* Tinga, Second Division].

[187] *F.F. Marine Corporation v. The Second Division National Labor Relations Commission,* 495 Phil. 140, 157-158 (2005) [Per *J.* Tinga, Second Division].

[188] *Guerrero v. National Labor Relations Commission*, 329 Phil. 1069, 1075 (1996) [Per *J.* Puno, Second Division].

losses must be "substantial, serious, actual[,] and real,"[189] not merely *de minimis*.

Citing case law, PAL states that "[t]here is no better proof of losses of an employer than the financial statements duly audited by independent external auditors."[190] PAL points to its photocopied financial statements[191] for 1997, 1998, and 1999 to establish the business losses it allegedly suffered. The photocopied documents supposedly reflect PAL's net losses: ₱2.5 billion on March 1997, ₱8.58 billion on March 1998, and ₱10.18 billion on March 1999.[192] These were allegedly "duly audited by independent external auditors."[193]

Dawal, *et al*. question the documents for being "mere machine copies"[194] and for not having been authenticated.[195] According to them, "PAL built its case through mere submission of copies of documents without presenting any witness or affidavit to identify and establish the genuineness and due execution of the said documents."[196] Neither have these documents been stamped "received" by the Bureau of Internal Revenue or the Securities and Exchange Commission.[197]

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[189] *Asian Alcohol Corporation v. National Labor Relations Commission,* 364 Phil. 912, 926 (1999) [Per *J.* Puno, Second Division].

[190] *Rollo* (G.R. No. 173921), p. 1009, PAL's Memorandum, citing *Revidad v. National Labor Relations Commission,* 315 Phil. 372, 389 (1995) [Per *J.* Regalado, Second Division] and *Asian Alcohol Corporation v. National Labor Relations Commission,* 364 Phil. 912, 927-928 (1999) [Per *J.* Puno, Second Division].

[191] *Id.* at 362-391, PAL Financial Statements as of March 31, 1999 and 1998 and for the years ended March 31, 1999, 1998 and 1997.

[192] *Id.* at 365.

[193] *Id.* at 1009, PAL's Memorandum.

[194] *Id.* at 1079, Dawal, *et al.'s* Memorandum.

[195] *Id.* at 1083.

[196] *Id.* at 1082.

[197] *Id.* at 251-280, PAL Financial Statements as of March 31, 1998, and 1997 and for the years ended March 31, 1998, 1997, and 1996; and 362-391,

PAL would like this court to believe that Dawal, *et al.* began assailing the presentation of mere photocopied documents "only at this late stage of the proceeding[.]"[198]

However, the records reveal that as early as in their Reply[199] to PAL's Position Paper submitted before the Labor Arbiter, Dawal, *et al*. already objected to the factual matters raised by PAL.[200] Specifically, Dawal, *et al.* asked that PAL present "substantial evidence to prove [its] allegations[,]"[201] including the "witnesses who [have] personal knowledge of the alleged facts stated therein [and] the persons who prepared the documents attached to its position paper."[202]

Dawal, *et al.* also raised their objection before the National Labor Relations Commission. In their Rejoinder and Urgent Motion to Conduct Full-Blown Hearing,[203] they prayed that "[t]he persons who prepared the financial statements of PAL should be asked to execute an affidavit and testify before [the National Labor Relations Commission]."[204]

Before this court, Dawal, *et al.* again assail the lack of "a competent witness or affidavit of any person who could testify and support its bare and gratuitous allegations[.]"[205] They lengthily discuss how PAL's reliance on unauthenticated photocopies fails to persuade.[206]

PAL Financial Statements as of March 31, 1999, and 1998 and for the years ended March 31, 1999, 1998, and 1997.

[198] *Id*. at 1009, PAL's Memorandum.

[199] *Id*. at 408-443.

[200] *Id*. at 414, PALEA and Dawal, *et al.*'s Reply.

[201] *Id*. at 431.

[202] *Id*.

[203] *Id*. at 453-468.

[204] *Id*. at 455.

[205] *Id*. at 1079, Dawal, *et al.*'s Memorandum.

[206] *Id*. at 1079-1096.

For its defense, PAL claims that "the rules of evidence and procedure in labor cases are not strictly applied."[207] Indeed, Rule I, Section 2 of the 2005 (as well as the 2011) Revised Rules of Procedure of the National Labor Relations Commission (NLRC Rules) provides as follows:

> SECTION 2. CONSTRUCTION. – These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

Article 221 of the Labor Code also states:

> **Art. 221. Technical Rules not binding and prior resort to amicable settlement.** In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling, and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process[.]

At this juncture, it is important to put into context the provisions cited above. Both Rule I, Section 2 of the NLRC Rules and Article 221 of the Labor Code cannot be read in isolation; rather, they should be understood in harmony with Article 4 of the Labor Code.

Article 4 states that all doubts regarding the "implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, *shall be resolved in favor of labor*."

In addition, Rule I, Section 2 explicitly states that the liberal construction shall be used to "carry out the objectives" of the 1987 Constitution and the Labor Code. Both the Organic Law and the Labor Code seek to provide full protection to labor.[208]

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[207] *Id.* at 1009, PAL's Memorandum.

[208] CONST., Art. XIII, Sec. 3, par. 1; *See* LABOR CODE, Art. 3.

In *Bunagan v. Sentinel Watchman & Protective Agency, Inc.,*[209] we have held that the liberal application in labor cases applies insofar as it gives life to "the mandate that the workingman's welfare should be the primordial and paramount consideration.[210]

In *Colgate-Palmolive Philippines, Inc. v. De la* Cruz:[211]

> In a protracted legal battle, capital can always protect its interests with its vast and superior resources as well as skilled legal services. Labor does not have such resources under its command; for which reason, the Constitution compels the State — including the courts as organs of the State — to accord labor the needed protection and assurance of social justice. From the very beginning, because of these essential differences in resources — and in power and influence — the battle between capital and labor is always unequal because labor is always the weaker of the two protagonists.[212]

Employees almost always have no possession of the company's financial statements. For reasons of equity, it is not the management or employer, *i.e.,* PAL, but the workers themselves, *i.e.*, Dawal, *et al.*, who can invoke the liberal interpretation rule here.

Moreover, contrary to PAL's claim, the burden is not on Dawal, *et al.* to "[move] for the submission of the original or authenticated copies of the documents."[213] Rather, it is on PAL to *prove* before this court the validity of its termination due to alleged business losses.[214]

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[209] 533 Phil. 283 (2006) [Per *J.* Puno, Second Division].

[210] *Id.* at 291.

[211] 150-A Phil. 540 (1972) [Per *J.* Makasiar, *En Banc*]

[212] *Id.* at 555.

[213] *Rollo* (GR. No. 173921), p. 1009, PAL's Memorandum.

[214] LABOR CODE, Art. 277(b) provides:

Article 211. Miscellaneous provisions . . .

(b) . . . The burden of proving that the termination was for a valid or authorized cause shall rest on the employer[.]

The resolution of this particular issue was entirely in PAL's hands. Companies such as PAL are required by law to file their audited financial statements before the Bureau of Internal Revenue[215] or the Securities and Exchange Commission.[216] Once filed, these financial statements become public documents,[217] and their genuineness and due execution no longer have to be proven.[218]

Thus, had PAL presented the original or certified true copies of the duly filed financial statements, then their genuineness and due execution would have been laid to rest.[219]

Instead, despite having possession of the original or certified true copies of these documents, PAL inexplicably failed to produce

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[215] See TAX CODE, Sec. 232.

[216] See SECURITIES CODE, Sec. 17.

[217] *Salas v. Sta. Mesa Market Corporation,* 554 Phil. 343, 348 (2007) [Per *J.* Corona, First Division]: "Financial statements, whether audited or not, are, as general rule, private documents. However, once financial statements are filed with a government office pursuant to a provision of law, they become public documents."

[218] RULES OF COURT, Rule 132, Secs. 19 and 23 provide:

RULE 132. Presentation of Evidence

. . . .

B. Authentication and Proof of Documents

Section 19. Classes of documents. – For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

. . . .

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

Section 23. Public documents as evidence. – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[219] See RULES OF COURT, Rule 132, Secs. 19, 23, 24, 25, 27, and 30. Public documents are admissible in evidence even without further proof of their genuineness and due execution.

them. All it could present as evidence were mere photocopies, which did not bear the official seal of or the stamp "received" by the Bureau of Internal Revenue or the Securities and Exchange Commission.[220]

At the very least, PAL could have submitted the affidavit of the person(s) who prepared the photocopied documents, or that of any witness who could support the alleged losses it suffered. PAL also failed to do this.

Rule V, Section 7(b) of the then prevailing 2005 (and Rule V, Sec. 11[c] of the 2011) NLRC Rules requires that the position papers of the parties be "accompanied by all supporting documents, *including the affidavits of witnesses,* which shall take the place of their direct testimony."

With PAL's quick access to its own documents, as well as its heavy burden of proving the validity of retrenchment, this court is bewildered as to how, at every stage of the proceedings, PAL failed to produce the original or certified true copies of the evidence it primarily relies on. Aware of Dawal, *et al*.'s objection even at the beginning of this case,[221] PAL should have taken steps to dispel any doubts surrounding the questioned photocopies.

The non-litigious nature of the proceedings before the Labor Arbiter and the National Labor Relations Commission[222] makes it easy for the employer to simply present any document, genuine or not.[223] This gives all the more reason for the photocopied

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[220] *Id*. at 251-280, PAL Financial Statements as of March 31, 1998, and 1997 and for the years ended March 31, 1998, 1997, and 1996; and 362-391, PAL Financial Statements as of March 31, 1999, and 1998 and for the years ended March 31, 1999, 1998, and 1997.

[221] *Rollo* (G.R. No. 173921), pp. 431, PALEA and Dawal, *et al.*'s Reply; and 1082, Dawal, *et al.*'s Memorandum.

[222] *Philippine Airlines, Inc. v. Tongson,* 459 Phil. 742, 752 (2003) [Per *J.* Sandoval-Gutierrez, Third Division].

[223] See RULES OF COURT, Rule 132(B). In contrast, in proceedings before the regular courts, a party must first authenticate the documents presented before these are accepted as evidence.

financial statements to not be considered at face value, especially absent an affidavit of a witness, where these would be used to justify the retrenchment of employees' livelihood.

VI

Granted that PAL suffered serious and actual business losses, it must still show that the retrenchment was reasonably necessary to effectively prevent the actual or imminent losses.

It is not enough for a company to simply incur business losses[224] or go through rehabilitation[225] to justify retrenchment. While it can be argued that undergoing corporation rehabilitation evinces its substantial business losses, PAL must still prove all the other elements for a valid retrenchment.

Article 298 of the Labor Code requires that the "retrenchment to prevent losses" should not be used to "circumven[t] the provisions of" the Labor Code. Stated otherwise, the retrenchment must not only be "reasonably necessary"[226] to avert serious business losses; it must also be made in good faith and without ill motive.[227]

PAL justifies its action by saying that it "was merely adhering to the . . . [R]ehabilitation Plan[.]"[228] The Rehabilitation Plan allegedly "mandates PAL to dispose/spin-off . . . the Maintenance and Engineering Department[.]"[229] A perusal of the records,

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[224] *F.F. Marine Corporation v. The Second Division National Labor Relations Commission,* 495 Phil. 140, 157-158 (2005) [Per *J.* Tinga, Second Division].

[225] *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.,* 581 Phil. 228, 257 (2008) [Per *J.* Ynares-Santiago, Third Division].

[226] *Guerrero v. National Labor Relations Commission,* 329 Phil. 1069, 1075 (1996) [Per *J.* Puno, Second Division].

[227] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira,* 639 Phil. 1, 11-12 (2010) [Per *J.* Del Castillo, First Division].

[228] *Rollo,* (G.R. No. 173921), p. 1022, PAL's Memorandum.

[229] *Id.* at 1021.

however, shows that the Rehabilitation Plan merely states that the sale of "a number of non-core activities that provide support services (or incremental revenues) to [PAL] *could be* of more value to external operators[.]"[230]

Far from showing the reasonable necessity for retrenchment, the Rehabilitation Plan states that it "does not purport to be comprehensive . . . and has not been independently verified."[231]

In *F.F. Marine Corporation v. The Second Division National Labor Relations Commission:*[232]

Even assuming that the corporation has actually incurred losses by reason of the Asian economic crisis, the retrenchment is not perfectly justified as there was no showing that the retrenchment was the last recourse resorted to by petitioners. Although petitioners allege in their petition before this Court that they had undertaken cost-cutting measures before they resorted to retrenchment, their contention does not inspire belief for the evidence shows that the petition for *certiorari* filed by petitioners with the Court of Appeals is bereft of any allegation of prior resort to cost-cutting measures other than retrenchment.[233] (Citation omitted)

Here, there is no showing that PAL "resorted to less drastic and *less permanent* cost-cutting measures"[234] prior to the so-called retrenchment. In 1998, PAL already retrenched about 5,000 employees.[235] Two years later, it again turned to cutting off its employees' livelihood.

Disposal of non-core activities is only 10th in the list of PAL's possible initiatives in support of rehabilitation.[236] Others include

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[230] *Id*. at 237, PAL's Amended and Restated Rehabilitation Plan.

[231] *Id*. at 227.

[232] 495 Phil. 140 (2005) [Per *J.* Tinga, Second Division].

[233] *Id*. at 158.

[234] *Oriental Petroleum and Minerals Corporation v. Fuentes,* 509 Phil. 684, 691 (2005) [Per *J.* Tinga, Second Division].

[235] *Rollo* (G.R. No. 173921), p. 1015, PAL's Memorandum.

[236] *Id*. at 234, PAL's Amended and Restated Rehabilitation Plan.

"focusing on core customer segments/markets"[237] and "improving customer service to gain market share."[238] PAL has not shown proof that retrenchment was indeed the remedy of last resort, and that it sought for retrenchment only after it had pursued all viable options to no avail.[239]

Likewise, PAL has "failed to explain how the rehiring of the affected employees in the spin-off could possibly alleviate PAL's financial difficulty."[240]

For there to be a valid retrenchment, the employer must exercise its management prerogative "in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure[.]"[241]

PAL attempts to prove its alleged good faith on "[t]he very generosity of the separation package [and] the job offers"[242] it gave to the dismissed employees.[243] According to PAL, providing generous separation pay "negates any impression that PAL was guilty of bad faith or misdoing its retrenchment policy."[244] Claiming that it "accommodat[ed]"[245] Dawal, *et al*. when it was "not legally obliged to[,]"[246] PAL expects to be lauded for its acts.[247]

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[237] *Id*.

[238] *Id*.

[239] See *F.F. Marine Corporation v. The Second Division National Labor Relations Commission,* 495 Phil. 140, 157-158 (2005) [Per *J.* Tinga, Second Division].

[240] *Rollo* (G.R. No. 173952), p. 202, Labor Arbiter's Decision.

[241] *International Management Services, et al. v. Logarta,* 686 Phil. 21, 31 (2012) [Per *J.* Peralta, Third Division].

[242] *Rollo* (G.R. No. 173921), p. 1012, PAL's Memorandum.

[243] *Id*. at 1013.

[244] *Id*.

[245] *Id*. at 1016.

[246] *Id*. at 1013.

[247] *Id*. at 1017.

We are not impressed.

That PAL gave separation pay way beyond[248] what the law requires is not challenged by the parties. However, this sheds doubts on PAL's alleged "dire financial condition[.]"[249]

PAL's job offer is unmistakably for lower positions, "with substantially diminished salaries and benefits[,]"[250] and conditioned on their being considered as new employees.[251] Thus, instead of providing utmost security and reward to PAL's enduring and loyal employees, PAL's acts effectively circumvented their security of tenure and seniority rights.

PAL's ill motive in dismissing its employees easily reveals itself. Prior to their termination, Dawal was its employee for 28 years (1972-2000),[252] Concepcion for 21 years (1979-2000)[253] and Sinobago for 17 years (1983-2000).[254]

When PAL terminated the services of Dawal, *et al.*, and subsequently offered to hire them explicitly as "new employee[s],"[255] their "security of tenure and seniority rights [became] meaningless."[256] Moreover, from earning ₱17,170 as Chief

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[248] *Id*. at 1019-1020. PAL claims that the retrenched employees "were paid the equivalent of one (1) month pay based on their latest basic salary monthly salary plus 25% thereof as separation pay aside from vacation and sick leave cash commutation based on their last monthly basic rate; prorated 13th and 14th months pay; [Critical Skills Retention Plan Program] retained premium; Travel Benefits for separated employee and his qualified dependents; Medical Benefits for separated employee and his qualified dependents and PAL Share of Stocks."

[249] *Id*. at 1014.

[250] *Id*. at 112, Court of Appeals Decision.

[251] *Rollo* (G.R. No. 173952), pp. 195-196, Labor Arbiter's Decision.

[252] *Rollo* (G.R. No. 173952), p. 196, Labor Arbiter's Decision.

[253] *Id*. at 196-197.

[254] *Id*. at 197.

[255] *Rollo* (G.R. No. 173921), p. 340, PAL's Job Offer to Dawal.

[256] *Rollo* (G.R. No. 173952), p. 207, Labor Arbiter's Decision.

Storekeeper, Dawal would be paid only ₱16,047 as Storekeeper.[257] Meanwhile, tenured employees Concepcion and Sinobago, who used to hold technical positions as Master Avionics Mechanics, were offered *non*-technical positions[258] a1so as new emp1oyees.[259]

In addition, PAL spun off the engineering department but created a new one under a different name, *i.e.* the Technical Services Department which, according to PAL, is also "an engineering department."[260] PAL "rehired a number of"[261] the retrenched personnel and assigned them to this newly formed engineering department.[262]

PAL's inconsistency belies its allegation of good faith. PAL invoked "severe and unabated financial hemorrhage,"[263] supposedly "aggravated by the strikes[,]"[264] but it gave steep separation packages to 1,443[265] retrenched employees. The separation pay for Dawal, Concepcion, and Sinobago alone amounted to ₱1,590,627.63.[266] PAL complained that it had become "over- manned"[267] because of the spin-off, but it offered new jobs to these dismissed emp1oyees.[268]

Thus, this court agrees with the Labor Arbiter and the Court of Appeals that there is no reasonable necessity for the

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[257] *Rollo* (G.R. No. 173921), p. 340, PAL's Job Offer to Dawal.

[258] *Id*. at 1016, PAL's Memorandum.

[259] *Rollo* (G.R. No. 173952), p. 207, Labor Arbiter's Decision.

[260] *Id*. at 367, PAL's Consolidated Rejoinder.

[261] *Id*.

[262] *Id*.

[263] *Rollo* (G.R. No. 173921), p. 1021, PAL's Memorandum.

[264] *Rollo* (G.R. No. 173952), p. 202, Labor Arbiter's Decision.

[265] *Rollo* (G.R. No. 173921), p. 1028, PAL's Memorandum.

[266] *Id*. at 348-350, Release, Waiver and Quitclaim. Dawal, Concepcion, and Sinobago received ₱590,511.90, ₱588,575.75, and ₱411,539.98, respectively.

[267] *Id*. at 1000, PAL's Memorandum.

[268] *Rollo* (G.R. No. 173952), pp. 199 and 202, Labor Arbiter's Decision.

retrenchment to "prevent any substantial and actual losses."[269] Moreover, PAL failed to prove "any degree of urgency to implement such retrenchment."[270] Indeed, if retrenchment were really necessary to forestall serious business losses, PAL should not have offered to rehire the dismissed employees, especially after it had already given them generous separation benefits.[271]

PAL cites *AG & P United Rank and File Association v. National Labor Relations Commission*[272] to show that the re-employment of dismissed workers is compatible with retrenchment itself.[273] The case PAL invokes, however, speaks of the hiring of employees on a project basis (as project employees).[274] On the other hand, the present case involves the rehiring of the dismissed employees themselves as *regular* employees.[275]

Considering that PAL acted in bad faith and that the grounds for termination were "not sufficiently and convincingly established,"[276] its dismissal of Dawal, *et al.*'s services is therefore unjustified, illegal, and of no effect.

VII

Accepting separation pay does not estop Dawal, *et al.* from questioning their illegal dismissal.

Accepting the amount of separation pay, as stated in Dawal, et al.'s respective Release, Waiver and Quitclaim, does not prevent

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[269] *Rollo* (G.R. No. 173921), p. 110, Court of Appeals Decision; *rollo* (G.R. No. 173952), p. 202, Labor Arbiter's Decision.

[270] *Rollo* (G.R. No. 173952), p. 202, Labor Arbiter's Decision.

[271] *Rollo* (GR. No. 173921), p. 111, Court of Appeals Decision.

[272] 332 Phil. 937 (1996) [*J.* Mendoza, Second Division].

[273] *Rollo* (G.R. No. 173921), p. 1017, PAL's Memorandum.

[274] *AG & P United Rank and File Association v. National Labor Relations Commission,* 332 Phil. 937, 945-946 (1996) [*J.* Mendoza, Second Division].

[275] *Rollo* (G.R. No. 173921), p. 340, PAL's Job Offer to Dawal.

[276] *F.F. Marine Corporation v. The Second Division National Labor Relations Commission,* 495 Phil. 140, 158 (2005) [Per *J.* Tinga, Second Division].

them from filing a complaint for illegal dismissal.[277] The law looks at quitclaims and releases with disfavor:[278]

> [T]he reason why quitclaims [are] commonly frowned upon as contrary to public policy, and why they are held to be ineffective to bar claims for the full measure of the workers' legal rights, is the fact that the employer and the employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of a job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not have waived any of their rights.[279]

Dawal, *et al.*'s non-waiver of rights is further supported by the respective disclaimers they wrote stating that they signed the release and quitclaims without prejudice "to [the] money claims filed[,]"[280] to "the favorabl[e] result of the PAL-PALBA dispute[,]"[281] or to the "rate of pay, wage distortion claim cases with PAL[.]"[282]

Nevertheless, to prevent undue prejudice to PAL, the separation pay already received by Dawal, *et al.*, "as consideration for signing the quitclaims[,]"[283] must be subtracted from their individual monetary awards.

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[277] *Soriano, Jr. v. National Labor Relations Commission,* 550 Phil. 111, 131 (2007) [Per *J.* Chico-Nazario, Third Division].

[278] *Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission,* G.R. No. 100658, March 2, 1993, 219 SCRA 356, 362 [Per *J.* Melo, Third Division].

[279] *Marcos v. National Labor Relations Commission,* 318 Phil. 172, 182 (1995) [Per *J.* Regalado, Second Division].

[280] *Rollo* (G.R. No. 173921), p. 348, Dawal's Release, Waiver and Quitclaim.

[281] *Id*. at 349, Concepcion's Release, Waiver and Quitclaim.

[282] *Id*. at 350, Sinobago's Release, Waiver and Quitclaim.

[283] *F.F. Marine Corporation v. The Second Division National Labor Relations Commission,* 495 Phil. 140, 158 (2005) [Per *J.* Tinga, Second Division].

VIII

The spin-off and retrenchment were not made in accordance with the PAL-PALEA Memorandum of Agreement.

The Court of Appeals correctly found that PAL did not properly consult with PALEA, in violation of the express mandate of the PAL-PALEA Memorandum of Agreement.[284]

The PAL-PALEA Memorandum of Agreement states that PAL may change its corporate structure only after "proper consultations with PALEA *within* 45 days before the implementation of said reorganization."[285]

PAL alleges that consultations were held in 1999, "even before the required 45-day consultation period."[286]

We are not convinced.

As found by the Labor Arbiter, PAL's supposed meeting with PALEA on June 15, 1999 "appear[ed] questionable."[287] First, it was supported only by PAL's self-serving Minutes of the Meeting.[288] Second, it was not held within 45 days prior to September 1, 2000.

The consultation period should have begun on July 18, 2000 and not in 1999. In counting the start of the consultation period, the PAL-PALEA Memorandum of Agreement uses the word "within," and not "at least."

Thus, from a plain reading of the stipulation, the proper consultation must begin specifically *within* 45 days prior to the date of effectivity of the spin-off. Forty-five days prior to September 1, 2000 begins on July 18, 2000, not earlier.

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[284] *Rollo* (G.R No. 173921), p. 111, Court of Appeals Decision.

[285] *Id*. at 111, Court of Appeals Decision, and 283, PAL-PALEA Memorandum of Agreement.

[286] *Id*. at 995, PAL's Memorandum.

[287] *Rollo* (G.R. No. 173952), p. 206, Labor Arbiter's Decision.

[288] *Rollo* (G.R. No. 173921), pp. 451-452. The Minutes of the PAL-PALEA Meeting was dated June 15, 1999.

PAL states that it "lost no time in advising PALEA of the formal commencement [of] the 45-day consultation period mandated under the CBA."[289] To prove this, PAL cites its letter-invitation[290] to PALEA dated March 24, 2000, requesting the PALEA Executive Board "for a meeting on March 30, 2000[.]"[291] PAL, however, failed to present evidence that the alleged meeting actually transpired.

As found by the Labor Arbiter, PAL and PALEA could not have possibly met within 45 days before September 1, 2000[292] because PAL refused to acknowledge the election of the incoming PALEA officers.[293] Likewise, even assuming the meeting happened on March 30, 2000, this was still prior to July 18, 2000, and is, thus, outside the 45-day consultation period.

Further, we agree with the Labor Arbiter's finding, as reinstated by the Court of Appeals, that the primers PAL allegedly distributed "do not constitute the required consultations which envision an actual meeting of the parties to discuss among themselves the matter/s in issue."[294] Indeed, as PAL itself admits, the primers merely "complement[ed] the consultation meetings with PALEA[,]"[295] and the alleged *ugnayan* sessions "with the employees were never meant as a substitute for the consultation meetings under the [Collective Bargaining Agreement]."[296] Even the National Labor Relations Commission held that the primers and the *ugnayan* sessions served only

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[289] *Rollo* (G.R. No. 173921), p. 1011, PAL's Memorandum.

[290] *Id*. at 287.

[291] *Id*.

[292] *Rollo* (G.R. No. 173952), p. 205, Labor Arbiter's Decision.

[293] *Id*. at 209-210.

[294] *Id*. at 205.

[295] *Rollo* (G.R. No. 173921), p. 996, PAL's Memorandum.

[296] *Id*. at 812, PAL, *et al.'s* Comment in CA-G.R. SP. No. 73030.

as "supplement[s] to the consultation meetings"[297] required by the PAL-PALEA Collective Bargaining Agreement.[298]

IX

We agree with the Court of Appeals that there was not enough evidence to prove that PAL committed unfair labor practices.

Dawal, *et al.* allege that PAL is guilty of the following acts: interfering with their right to self-organization,[299] refusing to bargain with PALEA,[300] and violating several provisions of the PAL-PALEA Collective Bargaining Agreement.[301] These unfair labor practices are found under Article 259[302] of the Labor Code, as amended:

> **Art. 259. Unfair Labor Practices of Employers.–** It shall be unlawful for an employer to commit any of the following unfair labor practices:
>
> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
>
> . . . .
>
> (g) To violate the duty to bargain collectively as prescribed by this Code;
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> . . . .
>
> (i) To violate a collective bargaining agreement. (Emphasis in the original, citation omitted)

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[297] *Rollo* (G.R. No. 173952), p. 187, National Labor Relations Commission Decision.

[298] *Rollo* (G.R. No. 173921), p. 1104, Dawal, *et al.'s* Memorandum.

[299] *Id*. at 1110 and 1121-1122, Dawal, *et al.'s* Memorandum.

[300] *Id*. at 1111 and 1122.

[301] *Id*. at 1106-1110.

[302] Article 259 was formerly Article 248, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

In *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.,*[303] we have held that the union has the burden to prove, by substantial evidence, its allegation of unfair labor practice.[304] Neither PALEA nor Dawal, *et al.* have discharged this burden.

On the first ground, Dawal, *et al.* only showed bare assertions that PAL's real purpose was to bust the union.[305] In terminating the services of those working for the maintenance and engineering facilities, PAL did not single out between the union and non-union members. Instead, PAL "phased out and sold"[306] the whole department, thereby severing the employment of all affected personnel.[307] Thus, contrary to Dawal, *et al.*'s allegations,[308] PAL did not discriminate against them by reason of their membership rn PALEA.

On the second ground, Dawal, *et al*. claim that PAL terminated their services in violation of its duty to bargain. They assert that at the time of their dismissal from work, PALEA was about to renew its Collective Bargaining Agreement with PAL.[309] They point to the fact that (protested) new PALEA President Jose T. Peñas III submitted a list of economic and non-economic proposals for the renewal of the PAL-PALEA Collective Bargaining Agreement,[310] which PAL ignored.[311]

The relevant dates, however, must be set straight. Dawal, *et al.*'s dismissal was on September 1, 2000. Meanwhile, PALEA

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[303] G.R. No. 140992, March 25, 2004, 426 SCRA 319 [Per *J.* Sandoval-Gutierrez, Third Division].

[304] *Id*. at 326.

[305] *Rollo* (G.R. No. 173921), p. 1110, Dawal, *et al.'s* Memorandum.

[306] *Id*. at 1004, PAL's Memorandum.

[307] *Id*.

[308] *Id*. at 1106, Dawal, *et al.'s* Memorandum.

[309] *Id*. at 165, PALEA and Dawal, *et al.'s* Amended Complaint and Position Paper.

[310] *Id*. at 158.

[311] *Id*. at 160.

President Jose T. Peñas III submitted proposals through a letter dated September 7, 2000, which PAL received on September 13, 2000.[312] Therefore, Dawal, *et al*. cannot claim that they were dismissed to prevent the renegotiation of the Collective Bargaining Agreement.

Moreover, PAL could not have validly negotiated for the renewal of its Collective Bargaining Agreement with PALEA due to a leadership crisis in PALEA at that time.[313] The Court of Appeals properly found that PAL was not motivated by malice or bad faith in its acts.[314] PAL validly declined to meet with the alleged newly-elected PALEA officers because the election was marred by "protests and petitions[.]"[315]

As borne by the records, the Department of Labor and Employment later nullified the proclamation of the new PALEA officers.[316] PAL's refusal to recognize the contending factions of the union (and their demands) was pursuant to "prudence and good sense[.]"[317] This does not amount to unfair labor practice under Article 259(g) of the Labor Code.[318]

On the third ground, Dawal, *et al.* assert that PAL disregarded the following provisions of the PAL-PALEA Collective Bargaining Agreement: Section 1 (Security of Tenure), Section 7 (Lay-off), and Section 10 (Seniority, Promotion, Job Reclassification, Job

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[312] *Id*. at 200.

[313] *Rollo* (G.R. No. 173952), p. 187, National Labor Relations Commission Decision.

[314] *Id*. at 98-99, Court of Appeals Resolution.

[315] *Rollo* (G.R. No. 173921), p. 186, PAL President Avelino Zapanta's letter dated March 27, 2000, addressed to former PALEA Secretary Jose T. Peñas III.

[316] *Id*. at 571-582, DOLE-NCR Decision in NCR-OD-0003-010-IRD. The Decision dated June 15,2000 was penned by Regional Director Maximo B. Lim.

[317] *Rollo* (G.R. No. 173952), p. 98, Court of Appeals Resolution; and 188, National Labor Relations Commission Decision.

[318] *Id*.

Progression and Demotion) of Article III on Job Security.[319] These allegedly amount to unfair labor practices under Article 259(i) of the Labor Code.[320]

Dawal, *et al.* are mistaken.

Article 274[321] of the Labor Code, as amended, qualifies Article 259(i):

> [V]iolations of a Collective Bargaining Agreement, *except those which are gross in character,* shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean *flagrant and/or malicious refusal* to comply with the *economic provisions* of such agreement. (Emphasis supplied)

In *Silva v. National Labor Relations Commission,*[322] we held that for there to be unfair labor practice, the violation of the Collective Bargaining Agreement must be gross and must be related to the Agreement's economic provisions.[323] Here, Dawal, *et al*. charge PAL of violating the provisions on Job Security in the Collective Bargaining Agreement, which are non- economic in nature.[324] Thus, PAL's acts do not constitute unfair labor practice under Article 259(i) of the Labor Code.

X

The Court of Appeals correctly ruled that Dawal, *et al*. are entitled to reinstatement with full backwages or additional separation pay plus backwages.

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[319] *Rollo* (G.R. No. 173921), pp. 1108-1110, *Dawal, et al.'s* Memorandum.

[320] *Id*. at 1106-1108.

[321] Article 274 was formerly Article 261, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

[322] 340 Phil. 286 (1997) [Per *J.* Romero, Second Division].

[323] *Id*. at 299-300.

[324] *San Miguel Foods, Inc. v. San Miguel Corporation Employees Union-PTWGO,* 561 Phil. 263, 271 (2007) [Per *J.* Carpio Morales, Second Division].

PAL failed to prove all the requisites for a valid dismissal due to retrenchment.

Whether there was redundancy or retrenchment, or redundancy caused by retrenchment, this court agrees with the Court of Appeals' and the Labor Arbiter's finding[325] that PAL illegally terminated the services of Dawal, *et al.*

Article 294[326] of the Labor Code provides employees the following rights against unjustified dismissals:

Art. 294. Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to *reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied, citation omitted)

Where reinstatement is not possible, an employee is entitled to separation pay in addition to one's monetary claims.[327] Damages may also be awarded if the dismissal was done in bad faith.[328]

Thus, in light of PAL's illegal dismissal of their services, Dawal, *et al.* are entitled to immediate reinstatement to their former positions "without loss of seniority rights and other privileges[,]"[329] as well as to their full backwages computed from the time PAL withheld their compensation up to the time

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[325] *Rollo* (G.R. No. 173921), p. 113, Court of Appeals Decision; *rollo* (G.R. No. 173952), p. 208, Labor Arbiter's Decision.

[326] Article 294 was formerly Article 279, before it was renumbered by DOLE Department Advisory No. 1 Series of 2015.

[327] *Golden Ace Builders, et al. v. Talde,* 634 Phil. 364, 370-371 (2010) [Per *J.* Carpio Morales, First Division].

[328] *Montinola v. Philippine Airlines,* G.R. No. 198656, September 8, 2014, 734 SCRA 439, 443 [Per *J.* Leonen, Second Division].

[329] LABOR CODE, Art. 294.

of their actual reinstatement.[330] Where reinstatement is not possible, they should be given the mentioned monetary awards in addition to the separation pay.[331]

As held by the Court of Appeals:

> Under the facts and evidence on record, it was sufficiently established that [Dawal, et al.] were illegally dismissed thereby entitling them to their money claims, except that their claims of holiday pay and premium pay for holidays should be denied for lack of evidence. Considering further that such dismissal was effected in total disregard of their length of service as well as in a wanton and oppressive manner, [Dawal, et al.] are entitled to the payment of moral and exemplary damages under Article 1701,[332] in conjunction with [A]rticles 21[333] and 2219 (10)[334] of the Civil Code of the Philippines, and Article 2232[335] of the same Code.[336]

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[330] LABOR CODE, Art. 294. See *Valdez v. National Labor Relations Commission,* 349 Phil. 760, 768 (1998) [Per *J.* Regalado, Second Division].

[331] *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 453 and 458 [Per *J.* Peralta, *En Banc*].

[332] CIVIL CODE, Art. 1701 provides:

Article 1701. Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.

[333] CIVIL CODE, Art. 21 provides:

Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[334] CIVIL CODE, Art. 2219 provides:

Article 2219. Moral damages may be recovered in the following and analogous cases:

. . . .

(10) Acts and actions referred to in Articles 21[.]

[335] CIVIL CODE, Art. 2232 provides:

Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

[336] *Rollo* (G.R. No. 173921), p. 113, Court of Appeals Decision.

The awards for moral and exemplary damages are "sufficient to ease [Dawal, *et al.*'s] moral suffering by reason of their illegal dismissal."[337]

Failure to serve the 30-day prior notice on Dawal also makes PAL liable for an indemnity of ₱50,000.00 as nominal damages.[338]

Moreover, for having been compelled to litigate, Dawal, *et al.* are entitled to an award for reasonable attorney's fees, pursuant to Article 2208(7)[339] of the Civil Code.[340] Both the Labor Arbiter[341] and the Court of Appeals[342] found the amount equivalent to 10% of their total award to be reasonable.

Finally, aside from reinstatement with backwages, illegally dismissed employees are entitled to interest at the legal rate.[343] In view of our ruling in *Nacar v. Gallery Frames*[344] and the existing temporary restraining order[345] on the Court of Appeals Decision, the rate of legal interest shall be 6% per annum

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[337] *Rollo* (G.R. No. 173952), p. 100, Court of Appeals Resolution.

[338] *Jaka Food Processing Corporation v. Pacot,* 494 Phil. 114, 122-123 (2005) [Per *J.* Garcia, *En Banc*].

[339] CIVIL CODE, Art. 2208(7) provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

. . . .

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers[.]

[340] *Sebuguero v. National Labor Relations Commission,* 318 Phil. 635, 652 (1995) [Per *J.* Davide Jr., First Division].

[341] *Rollo* (G.R. No. 173952), p. 209, Labor Arbiter's Decision.

[342] *Rollo* (G.R. No. 173921), p. 121, Court of Appeals Decision.

[343] *Lim v. HMR Philippines, Inc.,* G.R. No. 201483, August 4, 2014, 731 SCRA 576, 603-604 [Per *J.* Mendoza, Third Division].

[344] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per *J.* Peralta, *En Banc*].

[345] *Rollo* (G.R. No. 173952), p. 585, Supreme Court Resolution dated September 25, 2006.

beginning from the date of promulgation of this judgment until fully paid.

WHEREFORE, the Petition is **DENIED.** The Court of Appeals' July 21, 2004 Decision and July 28, 2006 Resolution in CA-G.R. SP No. 73030 are **AFFIRMED with MODIFICATION.** Judgment is rendered in favor of Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago:

(1) Ordering Philippine Airlines, Inc. to immediately reinstate Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago to positions equivalent to their former positions without loss of seniority rights and other benefits upon receipt of this Decision.

(2) Ordering Philippine Airlines, Inc. to pay Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago their full backwages based on their last salary received, other privileges, allowances, and benefits or their monetary equivalent, computed from the date of their dismissal on September 1, 2000 until their reinstatement, based on the last salary they had received. As of July 31, 2001, Isagani Dawal's, Lorna Concepcion's, and Bonifacio Sinobago's backwages are in the amounts stated and specified below:

(a) Isagani Dawal
— ₱17,170.00 x 12 months from September 1, 2000 to July 31, 2000 = ₱206,040.00

(b) Lorna Concepcion
— ₱22,540.00 x 12 months from September 1, 2000 to July 31, 2000 = ₱270,480.00

(c) Bonifacio Sinobago
— ₱21,675.00 x 12 months from September 1, 2000 to July 31, 2000 = ₱260,100.00

It should be stated and understood that the backwages of Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago shall be subject to further computation up to their reinstatement. ***It should be further stated and understood that the separation pay actually they had***

received should be deducted from their respective monetary awards.

(3) Ordering Philippine Airlines, Inc., in the event that there are no equivalent positions to which Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago may be reinstated ***(or where reinstatement is not possible),*** to pay, in addition to the separation pay already given them, their full backwages based on their last salary received, other privileges, allowances, and benefits or their monetary equivalent, computed from their dismissal on September 1, 2000 until their supposed actual reinstatement.

(4) ***Ordering Philippine Airlines, Inc. to pay Isagani Dawal ₱50,000.00 as nominal damages for failure to provide advanced (30-day) notice prior to his termination.***

(5) Ordering Philippine Airlines, Inc. to pay Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago ₱50,000.00 each as moral damages and ₱10,000.00 each as exemplary damages.

(6) Ordering Philippine Airlines, Inc. to pay Isagani Dawal, Lorna Concepcion, and Bonifacio Sinobago attorney's fees equivalent to ten percent (10%) of their respective total monetary award.

(7) ***Ordering Philippine Airlines, Inc. to pay legal interest of six percent (6%) per annum of Isagani Dawal's, Lorna Concepcion's, and Bonifacio Sinobago's total monetary awards computed from the date of finality of this judgment until fully paid.***

All other claims are dismissed.

SO ORDERED.

Carpio (Chairperson), *del Castillo,* and *Mendoza, JJ.,* concur.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 182629. February 24, 2016]

MERCEDES N. ABELLA, MA. THERESA A. BALLESTEROS and MARIANITO N. ABELLA, *petitioners, vs.* **HEIRS OF FRANCISCA C. SAN JUAN namely: GLICERIA SAN JUAN CAPISTRANO, BENIGNA SAN JUAN VASQUEZ, EVARISTO SAN JUAN, NIEVES SAN JUAN LUSTRE and MATILDE SAN JUAN QUILONIO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LAND REFORM PROGRAM; TENANT EMANCIPATION DECREE (PD NO. 27) ; TITLE TO THE LAND ACQUIRED PURSUANT TO PD 27 CANNOT BE TRANSFERRED EXCEPT TO THE GOVERNMENT OR BY HEREDITARY SUCCESSION, TO HIS SUCCESSORS.—** PD 27 provides for only two exceptions to the prohibition on transfer, namely, (I) transfer by hereditary succession and (2) transfer to the Government. *Torres v. Ventura* explained the provision, thus: x x x The law is clear and leaves no room for doubt. Upon the promulgation of Presidential Decree No. 27 on October 21, 1972, petitioner was DEEMED OWNER of the land in question. As of that date, he was declared emancipated from the bondage of the soil. As such, he gained the rights to possess, cultivate, and enjoy the landholding for himself. Those rights over that particular property were granted by the government to him and to no other. **To insure his continued possession and enjoyment of the property, he could not, under the law, make any valid form of transfer except to the government or by hereditary succession, to his successors.**

2. **ID.; ID.; ID.; ID.; SALES OR TRANSFERS OF LANDS MADE IN VIOLATION OF PD 27 IN FAVOR OF PERSONS OTHER THAN THE GOVERNMENT BY OTHER LEGAL MEANS OR TO THE FARMER'S SUCCESSOR BY HEREDITARY SUCCESSION ARE NULL AND VOID, BEING CONTRARY TO LAW AND PUBLIC POLICY; A RELOCATION AGREEMENT, OR AN EXCHANGE OR**

SWAPPING OF PROPERTIES IS A TRANSFER OR CONVEYANCE OF PROPERTY PROHIBITED UNDER PD 27.— [I]n *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon,* x x x we ruled: x x x. Anent the contravention of the prohibition under PD 27, we ruled in *Siacor v. Gigantana* and more recently in *[Caliwag-Carmona] v. Court of Appeals,* that **sales or transfers of lands made in violation of PD 27 and EO 228 in favor of persons other than the Government by other legal means or to the farmer's successor by hereditary succession are null and void. The prohibition even extends to the surrender of the land to the former landowner.** The sales or transfers are void *ab initio,* being contrary to law and public policy under Art. 5 of the Civil Code that "acts executed against the provisions of mandatory or prohibiting laws shall be void x x x." x x x. The intended exchange of properties by the parties as expressed in the Agreement and in the Deed of Donation entailed transfer of all the rights and interests of Francisca over the Balatas property to Dr. Abella. It is the kind of transfer contemplated by and prohibited by law. Thus, petitioners' argument that the Agreement was merely a relocation agreement, or one for the exchange or swapping of properties between Dr. Abella and Francisca, and not a transfer or conveyance under PD 27, has no merit. A relocation, exchange or swap of a property is a transfer of property. They cannot excuse themselves from the prohibition by a mere play on words.

3. **ID.; ID.; ID.; ID.; AN AGREEMENT WHICH CONTRAVENED THE PROHIBITION UNDER PD 27 ON THE TRANSFER OF LAND CANNOT BE VALIDATED BY DAR'S APPROVAL THEREOF, AS NO FORM OF VALIDATION CAN MAKE A VOID AGREEMENT LEGAL.—** We likewise agree with the CA that the DAR's approval did not validate the Agreement. Under PD 27 and the pronouncements of this Court, transfer of lands under PD 27 other than to successors by hereditary succession and the Government is void. A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification. No form of validation can make the void Agreement legal.

4. **ID.; ID.; ID.; ID.; THE PROHIBITION UNDER PD 27 ON THE TRANSFER OF LAND APPLIES EVEN IF THE**

FARMER-BENEFICIARY HAS NOT YET ACQUIRED ABSOLUTE TITLE TO THE LAND, AND THE PROTECTION BEGINS UPON THE PROMULGATION OF THE LAW; RATIONALE.— Our ruling in *Torres* is clear that the prohibition applies even if the farmer-beneficiary has not yet acquired absolute title to the land, and the protection begins upon the promulgation of the law, thus: [T]itle refers not only to that issued upon compliance by the tenant-farmer of the said conditions but also includes those rights and interests that the tenant-farmer immediately acquired upon the promulgation of the law. To rule otherwise would make a tenant-farmer falling in the category of those who have not yet been issued a formal title to the land they till — easy prey to those who would like to tempt them with cash in exchange for inchoate title over the same. Following this, absolute title over lands covered by Presidential Decree No. 27 would end up in the name of persons who were not the actual tillers when the law was promulgated.

5. **ID.; ID.; ID.; THE PROHIBITION UNDER PD 27 ON THE TRANSFER OF LAND EXTENDS TO THE RIGHTS AND INTERESTS OF THE FARMER IN THE LAND EVEN WHILE HE IS STILL PAYING THE AMORTIZATIONS ON IT; DEFAULT OR NON-PAYMENT IS NOT A GROUND FOR CANCELLATION OF THE CERTIFICATE OF LAND TRANSFER (CLT).—** [A]s we ruled in *Estate of the Late Encarnacion Vda. de Panlilio,* the prohibition extends to the rights and interests of the farmer in the land even while he is still paying the amortizations on it. Petitioners merely alleged in their petition that since Francisca defaulted in the payment of the annual amortizations for more than two years, she has given a ground for the forfeiture of her CLT. We disagree. Even assuming that the respondents defaulted in paying the amortization payments, default or non-payment is not a ground for cancellation of the CLT under the law. Instead, PD 27 provides that "(i)n case of default, the amortization due shall be paid by the farmers' cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him."

6. **ID.; ID.; ID.; PARTIES ARE NOT ESTOPPED FROM QUESTIONING THE VALIDITY OF AN AGREEMENT WHERE THE SAME CONTRAVENED THE PROHIBITION**

UNDER PD 27 ON THE TRANSFER OF LAND, AS ESTOPPEL CANNOT BE PREDICATED ON A VOID CONTRACT OR ON ACTS WHICH ARE PROHIBITED BY LAW OR ARE AGAINST PUBLIC POLICY.— Estoppel cannot be predicated on a void contract or on acts which are prohibited by law or are against public policy. In *Torres,* we refused to apply the principle of *pari delicto* which would in effect have deprived the leasehold tenant of his right to recover the landholding which was illegally disposed of. We ruled that "(t)o hold otherwise will defeat the spirit and intent of [PD 27] and the tillers will never be emancipated from the bondage of the soil." In *Santos v. Roman Catholic Church of Midsayap, et al.,* we explained: x x x Here appellee desires to nullify a transaction which was done in violation of the law. **Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality, but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated. This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve"** x x x. Thus, respondents were not estopped from questioning the validity of the Agreement as it contravened the prohibition under PD 27 on the transfer of land. The tenant-farmer cannot barter away the benefit and protection granted in its favor by law as it would defeat the policy behind PD 27.

7. **CIVIL LAW; UNJUST ENRICHMENT; ELEMENTS; CONDITIONS.—** In *Flores v. Lindo, Jr.,* we laid down the elements of unjust enrichment as follows: There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.

8. **ID.; ID.; THE NULLITY OF THE AGREEMENT REQUIRES RETURN OF THE PARTIES TO THE *STATUS QUO ANTE* TO AVOID UNJUST ENRICHMENT. —** The consequence of our declaration that the Agreement is void is that the respondents, as heirs of Francisca, have the right to the Balatas property. This would unjustly enrich respondents at the expense of petitioners, predecessors-in-interest of Dr. Abella. To remedy this unjust result, respondents should return to the petitioners the consideration given by Dr. Abella in exchange for the Balatas property: a) the Cararayan property; b) ₱5,250.00 disturbance compensation; and c) the 120-square meter home lot in Balatas, Naga City. We note however, that the 120-square meter home lot in Balatas, Naga City has already been sold and transferred to Delfino who was not impleaded in this case. Thus, without prejudice to whatever right petitioners have against Delfino, respondents should pay petitioners the fair market value of the Balatas home lot at the time it was transferred to respondents. Such fair market value shall be subject to determination by the trial court.

APPEARANCES OF COUNSEL

Simando & Associates for petitioners.
Gregorio P. Deleña for respondents.

D E C I S I O N

JARDELEZA, *J.*:

In this case, we reiterate the prohibition on the transfer of lands under Presidential Decree No. 27[1] (PD 27) except transfer to the Government or by hereditary succession.

The Facts

Francisca C. San Juan (Francisca), was a tenant to a parcel of land consisting of six thousand (6,000) square meters owned

[1] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

by petitioners, and located at Balatas, Naga City, Camarines Sur (Balatas property). The portion was covered by Certificate of Land Transfer (CLT) No. 843 (159301) issued on October 18, 1973.[2]

On January 28, 1981, Dr. Manuel Abella (Dr. Abella) and Francisca entered into an Agreement[3] whereby the Balatas property will be exchanged with a 6,000-square meter agricultural lot situated at San Rafael, Cararayan, Naga City (Cararayan property). The parties agreed that in addition to the Cararayan property, Francisca shall receive from Dr. Abella the amount of ₱5,250.00 as disturbance compensation and a 120-square meter home lot situated at Balatas, Naga City.[4]

Dr. Abella complied with all the stipulations in the Agreement. The Department of Agrarian Reform (DAR) thru Salvador Pejo, CESO II, Ministry of Agrarian Reform (MAR) Regional Director[5] and later DAR Regional Director Pablo S. Sayson also approved the Agreement.[6]

Subsequently, the Cararayan property was declared in the name of Francisca, under Tax Declaration (TD) No. 01-006-0169.[7] On the other hand, the home lot at Balatas, Naga City, was later soId for ₱7,200.00 to Felimon Delfino, Jr. (Delfino), on February 26, 1988.[8] However, CLT No. 843 (159301) was not cancelled.

Sometime in 1983, Benigna San Juan Vasquez (Benigna), daughter of Francisca, sought permission from, and was allowed by Mercedes N. Abella (Mrs. Abella), wife of Dr. Abella, to

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[2] *Rollo,* pp. 114-115.

[3] *Id.* at 93-94.

[4] *Id.*

[5] *Rollo,* p. 161.

[6] Order dated June 18, 1991, *Id.* at 163-165.

[7] *Rollo,* p. 97.

[8] Deed of Absolute Sale, *Id.* at 96.

construct a small house on the Balatas property. Thus, on different occasions, Benigna and her children constructed their residential houses on the property.[9] Later, when Mrs. Abella requested Benigna and her children to vacate the property, they refused, claiming ownership. This prompted Mrs. Abella to file an action for unlawful detainer before the Municipal Trial Court (MTC) of Naga City.[10]

On November 26, 2004, the MTC ruled in favor of the heirs of Dr. Abella in the unlawful detainer case.[11] The MTC issued a writ of execution[12] and writ of demolition[13] against Benigna and her sons.

On March 15, 2005, Benigna, for herself and in behalf of the other heirs of Francisca namely: Gliceria San Juan-Capistrano, Evaristo C. San Juan, Benigna San Juan Vasquez, Eduvejes San Juan-Martines, Nieves San Juan-Lustre, Maria San Juan-Banavides and Matilde San Juan-Quilonio (respondents), filed a Complaint with the Regional Trial Court, Branch 23, Naga City (RTC) for quieting of title and declaration of ownership and possession of real property with prayer for a temporary restraining order, preliminary injunction and damages against Mrs. Abella, Theresa A. Ballesteros and Marianito N. Abella (petitioners).[14] The Complaint prayed for a decision declaring respondents as absolute and lawful owners of the Balatas property and holding petitioners jointly and severally liable for moral and exemplary damages, attorney's fees and appearance fee, litigation expenses and costs of suit.[15] The RTC subsequently granted the application for a temporary restraining order.[16]

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[9] *Rollo,* p. 100.

[10] *Id.* at 20.

[11] *Id.* at 66, 126.

[12] *Id.* at 122.

[13] *Id.* at 126-127.

[14] *Id.* at 76-79.

[15] *Id.* at 78.

[16] *Id.* at 66.

Petitioners alleged that Dr. Abella and Francisca executed the Agreement for the exchange of lots because the Balatas property was reclassified as a high density commercial, residential and urban area and hence no longer suitable for agriculture.[17] Since the Balatas property was exchanged with the Cararayan property on January 28, 1981, Francisca ceased to be its owner long before she died on November 19, 1996. Thus, respondents couId not have inherited the Balatas property.[18]

Respondents countered that the reclassification by the City Government of Naga did not convert the use of the land from agricultural to residential or commercial. The authority to convert the land use of a property is vested by law in the DAR.[19] They further argued that the Agreement is null and void as it contravened the prohibition on transfer under PD 27. Thus, the approval by the DAR was of no moment.[20]

RTC Ruling

The RTC rendered a Decision on April 12, 2005[21] dismissing the complaint for lack of merit. It ruled that with the execution of the Agreement between Dr. Abella and Francisca, the latter's legal or equitable title to, or interest on the Balatas property, ceased to exist. Under the exchange, Francisca gave up her interest in the Balatas property in favor of an interest in the Cararayan property. Respondents as heirs of Francisca, in turn, acquired this interest on the Cararayan property.[22]

The RTC further ruled that the Agreement did not affect the right or interest of Francisca as a tenant. The right was eventually enjoyed by one of her daughters, respondent Maria San Juan-

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[17] *Id.* at 17, 138-151.

[18] Answer to the Complaint, *Id.* at 86-92.

[19] Memorandum for Plaintiffs, *rollo,* p. 108.

[20] *Id.* at 108-110.

[21] *Id.* at 64-67.

[22] *Id.* at 66-67.

Banavides, who is the present possessor and cultivator of the Cararayan property. The RTC heId that although there was no showing that the title to the Balatas property was cancelled or encumbered, most probably due to oversight, the execution of the Agreement, duly approved by the DAR, operates to cancel the certificate of land transfer.[23]

The respondents appealed to the Court of Appeals (CA), contending that under PD 27, title to the Balatas property could not have been acquired by the petitioners since its transfer is limited only to the government or the grantee's heirs by way of succession. Thus, the Agreement is an invalid instrument which casts a cloud on respondents' title.[24]

CA Decision

On October 16, 2007, the CA reversed the RTC Decision and ruled that the Agreement was void, for being violative of (1) PD 27 which provides that title to the land acquired pursuant to the Decree of Land Reform Program of the Government shall not be transferable, except by hereditary succession or to the Government, in accordance with its provisions, the Code of Agrarian Reform and other existing laws and regulations;[25] and (2) Memorandum Circular No. 7, series of 1979 issued by the MAR, which declares as null and void the transfer by the beneficiaries under PD 27 of the ownership, rights and/or possession of their farms/home lots to other persons.[26] The CA also cited *Toralba v. Mercado,*[27] where this Court ruled that the rights and interests covered by certificates of land transfer are beyond the commerce of man.[28]

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[23] *Id.* at 67.

[24] *Id.* at 182-197.

[25] *Id.* at 58.

[26] *Id.*

[27] G.R. No. 146480, July 14, 2004, 434 SCRA 433.

[28] *Rollo,* pp. 57-58.

The CA further ruled that the DAR approval cannot clothe the void Agreement with validity.[29] In addition, the CA noted that the classification of the Balatas property from agricultural to high density commercial, residential and urban area was done after the Agreement was executed, contrary to petitioners' claim.[30] The dispositive portion of the CA decision reads:

> **WHEREFORE,** the assailed decision dated April 12, 2005 of the RTC, Branch 23, Naga City, in Civil Case No. RTC'2005-0033, is **REVERSED** and **SET ASIDE**. A new judgment is entered, declaring plaintiffs-appellants the owners of the subject property covered by CLT No. 843 and quieting their title thereto.
>
> **SO ORDERED.**[31] (Emphasis in the original.)

Petitioners filed a Motion for Reconsideration which was denied by the CA in a Resolution dated April 14, 2008.[32]

The Petition

Petitioners assail the CA Decision and Resolution on the following grounds:

First, the Agreement, being a mere relocation agreement, did not violate nor contravene the true spirit of PD 27 and other agrarian reform laws, rules and regulations.[33]

Second, the DAR/MAR are agencies tasked to implement PD 27 and other agrarian laws, rules and regulations relative to the disputed land, thus their approval of the Agreement must be accorded great weight by the CA.[34]

Third, Toralba v. Mercado is not applicable because Francisca did not surrender the Balatas property to her former landowner,

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[29] *Id.* at 59.

[30] *Id.*

[31] *Rollo,* p. 59-A.

[32] *Id.* at 31, 61-62.

[33] *Id.* at 32-34.

[34] *Id.* at 34-36.

Dr. Abella, as contemplated under PD 27. Instead, she received in return the Cararayan property.[35]

Fourth, PD 27 does not automatically vest ownership of a piece of land to a tenant-farmer beneficiary, contrary to the findings of the CA. Pending compliance with certain conditions set forth by PD 27, a qualified farmer cannot claim the right of absolute ownership over the land because he is considered as a mere prospective owner. Francisca defaulted in the payment of the annual amortizations for more than two years, thus, her status as deemed owner of the landholding covered by CLT No. 843 (159301) had ceased to exist. This hoIds true even if the cancellation of the CLT was not annotated on the certificate of land transfer and the CLT was not cancelled from the registry book of the Registry of Deeds.[36]

Fifth, petitioners maintain that the respondents are estopped from questioning the Agreement. Benigna knew of the Agreement and yet, she neither complained nor moved to have it cancelled. When Benigna sought permission from Mrs. Abella that she be allowed to stay in the property, she recognized Mrs. Abella and the chiIdren as its owners. Benigna even benefited from the benevolence of the petitioners when upon her request, she and her family were allowed to construct their houses on the property without paying any rentals.[37]

Sixth, the decision of the CA wouId unjustly enrich respondents at the expense of the petitioners. Francisca, the predecessor-in-interest of the respondents had already received, and enjoyed the following properties: (a) 0.600 hectare or 6,000-square meter Cararayan property; (b) disturbance compensation of ₱5,250.00; and (c) the 120-square meter Balatas home lot, all of which were given by Dr. Abella in exchange for the Balatas property.

And yet, by virtue of the CA decision, the respondents wouId still be entitled to recover the Balatas property.[38]

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[35] *Id.* at 36-38.

[36] *Id.* at 38-41.

[37] *Id.* at 41-43.

[38] *Id.* at 43-45.

Our Ruling

1. The Agreement is void for contravening PD 27.

The resolution of this Petition hinges on the determination of whether the Agreement between Dr. Abella and Francisca is void for violating PD 27.

We affirm the CA ruling.

PD 27 provides for only two exceptions to the prohibition on transfer, namely, (I) transfer by hereditary succession and (2) transfer to the Government.[39]

Torres v. Ventura[40] explained the provision, thus:

x x x x x x x x x

The law is clear and leaves no room for doubt. Upon the promulgation of Presidential Decree No. 27 on October 21, 1972, petitioner was DEEMED OWNER of the land in question. As of that date, he was declared emancipated from the bondage of the soil. As such, he gained the rights to possess, cultivate, and enjoy the landholding for himself. Those rights over that particular property were granted by the government to him and to no other. **To insure his continued possession and enjoyment of the property, he couId not, under the law, make any valid form of transfer except to the government or by hereditary succession, to his successors.**

Yet, it is a fact that despite the prohibition, many farmer-beneficiaries like petitioner herein were tempted to make use of their land to acquire much needed money. Hence, the then Ministry of Agrarian Reform issued the following Memorandum Circular:

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[39] PD 27 provides:

x x x x x x x x x

Title to land acquired pursuant to this Decree or the Land Reform Program of the Government **shall not be transferable except by hereditary succession or to the Government** in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations; x x x (Emphasis supplied.)

[40] G.R. No. 86044, July 2, 1990, 187 SCRA 96.

"Despite the above prohibition, however, there are reports that many farmer-beneficiaries of PD 27 have *transferred the ownership, rights, and/or possession of their farms/ homelots* to other persons or have surrendered the same to their former landowners. All these transactions/surrenders are violative of PD 27 and therefore, null and void."[41] (Citations omitted, emphasis supplied.)

This interpretation is reiterated in *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon,*[42] where we ruled:

Thus, PD 27 is clear that after full payment and title to the land is acquired, the land shall not be transferred except to the heirs of the beneficiary or the Government. If the amortizations for the land have not yet been paid, then there can be no transfer to anybody since the lot is still owned by the Government. The prohibition against transfers to persons other than the heirs of other qualified beneficiaries stems from the policy of the Government to develop generations of farmers to attain its avowed goal to have an adequate and sustained agricultural production. With certitude, such objective will not see the light of day if lands covered by agrarian reform can easily be converted for non-agricultural purposes.

x x x x x x x x x

Anent the contravention of the prohibition under PD 27, we ruled in *Siacor v. Gigantana* and more recently in [*Caliwag-Carmona*] *v. Court of Appeals,* that **sales or transfers of lands made in violation of PD 27 and EO 228 in favor of persons other than the Government by other legal means or to the farmer's successor by hereditary succession are null and void. The prohibition even extends to the surrender of the land to the former landowner**. The sales or transfers are void *ab initio,* being contrary to law and public policy under Art. 5 of the Civil Code that "acts executed against the provisions of mandatory or prohibiting laws shall be void x x x." In this regard, the DAR is duty-bound to take appropriate measures to annul the illegal transfers and recover the land unlawfully conveyed to non-qualified persons for disposition to qualified beneficiaries. In the case at bar, the alleged transfers made by some if not all of respondents

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[41] *Id.* at 104-105.

[42] G.R. No. 148777, October 18, 2007, 536 SCRA 565.

Gonzalo Dizon, *et al.* (G.R. No. 148777) of lands covered by PD 27 to non-qualified persons are illegal and null and void.[43] (Citations omitted.)

In the Agreement, Dr. Abella and Francisca stipulated that the Cararayan property will be placed under Operation Land Transfer and that a new CLT shall be issued in the name of Francisca.[44] The parties also agreed that after the execution of the Agreement, Francisca shall vacate the Balatas property and deliver its possession to Dr. Abella.[45] Further, the *Deed of Donation of Land Covered by Presidential Decree No. 27* dated July 1, 1981 provided that "for and in consideration of the [landowner-donor's] generosity and in exchange of the [tenant-tiller donee's] [farm lot] at Balatas, City of Naga, the [landowner-donor] do hereby transfer and convey to the [tenant-tiller-donee], by way of [donation] the parcel of land above-described."[46]

The intended exchange of properties by the parties as expressed in the Agreement and in the Deed of Donation entailed transfer of all the rights and interests of Francisca over the Balatas property to Dr. Abella. It is the kind of transfer contemplated by and prohibited by law. Thus, petitioners' argument that the Agreement was merely a relocation agreement, or one for the exchange or swapping of properties between Dr. Abella and Francisca, and not a transfer or conveyance under PD 27, has no merit. A relocation, exchange or swap of a property is a transfer of property. They cannot excuse themselves from the prohibition by a mere play on words.

We likewise agree with the CA that the DAR's approval did not validate the Agreement. Under PD 27 and the pronouncements of this Court, transfer of lands under PD 27 other than to successors by hereditary succession and the Government is void.[47]

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[43] *Id.* at 600-605.

[44] *Rollo*, p. 93.

[45] *Id.* at 94.

[46] *Id.* at 160.

[47] *Torres v. Ventura, supra* note 40; *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon, supra* note 42.

A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification.[48] No form of validation can make the void Agreement legal.

II. The prohibition under PD 27 applies even if the farmer-beneficiary has not yet acquired absolute title.

Our ruling in *Torres* is clear that the prohibition applies even if the farmer-beneficiary has not yet acquired absolute title to the land, and the protection begins upon the promulgation of the law, thus:

> [T]itle refers not only to that issued upon compliance by the tenant-farmer of the said conditions but also includes those rights and interests that the tenant-farmer immediately acquired upon the promulgation of the law. To rule otherwise wouId make a tenant-farmer falling in the category of those who have not yet been issued a formal title to the land they till—easy prey to those who would like to tempt them with cash in exchange for inchoate title over the same. Following this, absolute title over lands covered by Presidential Decree No. 27 wouId end up in the name of persons who were not the actual tillers when the law was promulgated.[49]

Further, as we ruled in *Estate of the Late Encarnacion Vda. de Panlilio,* the prohibition extends to the rights and interests of the farmer in the land even while he is still paying the amortizations on it.[50]

Petitioners merely alleged in their petition that since Francisca defaulted in the payment of the annual amortizations for more than two years, she has given a ground for the forfeiture of her CLT.

We disagree. Even assuming that the respondents defaulted in paying the amortization payments, default or non-payment is

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[48] *Francisco v. Herrera,* G.R. No. 139982, November 21, 2002, 392 SCRA 317, 323.

[49] *Supra* note 40 at 105.

[50] *Supra* note 42 at 604.

not a ground for cancellation of the CLT under the law. Instead, PD 27 provides that "(i)n case of default, the amortization due shall be paid by the farmers' cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him." In any event, petitioners failed to show the cancellation of the CLT prior to the Agreement which would have removed the deemed owner status of Francisca over the Balatas property.

III. The respondents are not estopped from questioning the Agreement.

Petitioners urge us to deny any equitable relief to the respondents on the ground that they did not complain or have the Agreement cancelled and even benefited from the benevolence of petitioners. Under the theory of the petitioners, estoppel would bar the respondents from recovering the Balatas property.[51]

We are not convinced. Estoppel cannot be predicated on a void contract or on acts which are prohibited by law or are against public policy.[52]

In *Torres,* we refused to apply the principle of *pari delicto* which would in effect have deprived the leasehold tenant of his right to recover the landholding which was illegally disposed of. We ruled that "(t)o hold otherwise will defeat the spirit and intent of [PD 27] and the tillers will never be emancipated from the bondage of the soil."[53] In *Santos v. Roman Catholic Church of Midsayap, et al.,*[54] we explained:

x x x Here appellee desires to nullify a transaction which was done in violation of the law. **Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried**

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[51] *Rollo,* pp. 41-43.

[52] *De los Santos v. De la Cruz,* G.R. No. L-29192, February 22, 1971, 37 SCRA 555, 561 citing 17 Am. Jur. 605 and *Baltazar v. Lingayen Gulf Electric Power Co., Inc.,* G.R. Nos. 16236-38, June 30, 1965, 14 SCRA 522.

[53] *Supra* note 40 at 106.

[54] 94 Phil. 405 (1954).

out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated *(Pascua vs. Talens, supra)*. This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve" *(Gonzalo Puyat & Sons, Inc. vs. Pantaleon de las Ama, et al.,* 74 Phil. 3). We are, therefore, constrained to hoId that appellee can maintain the present action it being in furtherance of this fundamental aim of our homestead law.[55] (Emphasis supplied.)

Thus, respondents were not estopped from questioning the validity of the Agreement as it contravened the prohibition under PD 27 on the transfer of land. The tenant-farmer cannot barter away the benefit and protection granted in its favor by law as it wouId defeat the policy behind PD 27.

IV. The nullity of the Agreement requires the return of the parties to the status quo ante to avoid unjust enrichment.

In *Flores v. Lindo, Jr.,*[56] we laid down the elements of unjust enrichment as follows:

There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.[57]

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[55] *Id.* at 411.

[56] G.R. No. 183984, April 13, 2011, 648 SCRA 772.

[57] *Id.* at 782-783 citing *Republic v. Court of Appeals,* G.R. No. 160379, August 14, 2009, 596 SCRA 57 citing *Benguet Corporation v. Department*

The consequence of our declaration that the Agreement is void is that the respondents, as heirs of Francisca, have the right to the Balatas property. This wouId unjustly enrich respondents at the expense of petitioners, predecessors-in-interest of Dr. Abella. To remedy this unjust result, respondents shouId return to the petitioners the consideration given by Dr. Abella in exchange for the Balatas property: a) the Cararayan property; b) ₱5,250.00 disturbance compensation; and c) the 120-square meter home lot in Balatas, Naga City. We note however, that the 120-square meter home lot in Balatas, Naga City has already been soId and transferred to Delfino who was not impleaded in this case. Thus, without prejudice to whatever right petitioners have against Delfino, respondents shouId pay petitioners the fair market value of the Balatas home lot at the time it was transferred to respondents. Such fair market value shall be subject to determination by the trial court.

WHEREFORE, the assailed Decision of the CA dated October 16, 2007 and Resolution dated April 14, 2008 are **AFFIRMED** with the **MODIFICATION** that respondents shouId return to the petitioners the 6,000-square meter parcel of land located in Cararayan, Naga City, Camarines Sur, and the amount of ₱5,250.00 with legal interest computed at the rate of 6% per annum reckoned from the finality of this judgment until fully paid. This case is remanded to the Regional Trial Court, Branch 23, Naga City for the determination of the fair market value of the Balatas home lot at the time of donation.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Reyes, JJ.,* concur.

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of Environment and Natural Resources-Mines Adjudication Board, G.R. No. 163101, February 13, 2008, 545 SCRA 196; *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation,* G.R. No. 138088, January 23, 2006, 479 SCRA 404, and *P.C. Javier & Sons, Inc. vs. Court of Appeals,* G.R. No. 129552, June 29, 2005, 462 SCRA 36.

THIRD DIVISION

[G.R. No. 183486. February 24, 2016]

THE HONGKONG & SHANGHAI BANKING CORPORATION, LIMITED, *petitioner, vs.* **NATIONAL STEEL CORPORATION and CITYTRUST BANKING CORPORATION (NOW BANK OF THE PHILIPPINE ISLANDS),** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CODE OF COMMERCE; LETTER OF CREDIT; DEFINED AND CONSTRUED.—** A letter of credit is a commercial instrument developed to address the unique needs of certain commercial transactions. It is recognized in our jurisdiction and is sanctioned under Article 567 of the Code of Commerce and in numerous jurisprudence defining a letter of credit, the principles relating to it, and the obligations of parties arising from it. In *Bank of America, NT & SA v. Court of Appeals,* this Court defined a letter of credit as ". . . a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying." Through a letter of credit, a buyer obtains the credit of a third party, usually a bank, to provide assurance of payment. This, in turn, convinces a seller to part with his or her goods even before he or she is paid, as he or she is insured by the third party that he or she will be paid as soon as he or she presents the documents agreed upon. x x x Letters of credit are defined and their incidences regulated by Articles 567 to 572 of the Code of Commerce. These provisions must be read with Article 2 of the same code which states that acts of commerce are governed by their provisions, by the usages and customs generally observed in the particular place and, in the absence of both rules, by civil law. In addition, Article 50 also states that commercial contracts shall be governed by the Code of Commerce and special laws and in their absence, by general civil law. The International Chamber of Commerce (ICC) drafted a set of

rules to govern transactions involving letters of credit. This set of rules is known as the Uniform Customs and Practice for Documentary Credits (UCP). Since its first issuance in 1933, the UCP has seen several revisions, the latest of which was in 2007, known as the UCP 600. However, for the period relevant to this case, the prevailing version is the 1993 revision called the UCP 400. Throughout the years, the UCP has grown to become the worldwide standard in transactions involving letters of credit. It has enjoyed near universal application with an estimated 95% of worldwide letters of credit issued subject to the UCP. x x x Thus, for the purpose of clarity, letters of credit are governed primarily by their own provisions, by laws specifically applicable to them, and by usage and custom. Consistent with our rulings in several cases, usage and custom refers to UCP 400. When the particular issues are not covered by the provisions of the letter of credit, by laws specifically applicable to them and by UCP 400, our general civil law finds suppletory application.

2. **ID.; ID.; ID.; THERE ARE USUALLY THREE TRANSACTIONS AND THREE PARTIES IN A TRANSACTION INVOLVING A LETTER OF CREDIT; ELUCIDATED.—** A letter of credit generally arises out of a separate contract requiring the assurance of payment of a third party. In a transaction involving a letter of credit, there are usually three transactions and three parties. The first transaction, which constitutes the underlying transaction in a letter of credit, is a contract of sale between the buyer and the seller. The contract may require that the buyer obtain a letter of credit from a third party acceptable to the seller. The obligations of the parties under this contract are governed by our law on sales. The second transaction is the issuance of a letter of credit between the buyer and the issuing bank. The buyer requests the issuing bank to issue a letter of credit naming the seller as the beneficiary. In this transaction, the issuing bank undertakes to pay the seller upon presentation of the documents identified in the letter of credit. The buyer, on the other hand, obliges himself or herself to reimburse the issuing bank for the payment made. In addition, this transaction may also include a fee for the issuing bank's services. This transaction constitutes an obligation on the part of the issuing bank to perform a service in consideration of the buyer's payment. The obligations of the parties and their remedies in cases of

breach are governed by the letter of credit itself and by our general law on obligations, as our civil law finds suppletory application in commercial documents. The third transaction takes place between the seller and the issuing bank. The issuing bank issues the letter of credit for the benefit of the seller. The seller may agree to ship the goods to the buyer even before actual payment provided that the issuing bank informs him or her that a letter of credit has been issued for his or her benefit. This means that the seller can draw drafts from the issuing bank upon presentation of certain documents identified in the letter of credit. The relationship between the issuing bank and the seller is not strictly contractual since there is no privity of contract nor meeting of the minds between them. It also does not constitute a stipulation *pour autrui* in favor of the seller since the issuing bank must honor the drafts drawn against the letter of credit regardless of any defect in the underlying contract. Neither can it be considered as an assignment by the buyer to the seller-beneficiary as the buyer himself cannot draw on the letter. From its inception, only the seller can demand payment under the letter of credit. It is also not a contract of suretyship or guaranty since it involves primary liability in the event of default. Nevertheless, while the relationship between the seller-beneficiary and the issuing bank is not strictly contractual, strict payment under the terms of a letter of credit is an enforceable right. This enforceable right finds two legal underpinnings. First, letters of credit, as will be further explained, are governed by recognized international norms which dictate strict compliance with its terms. Second, the issuing bank has an existing agreement with the buyer to pay the seller upon proper presentation of documents. Thus, as the law on obligations applies even in commercial documents, the issuing bank has a duty to the buyer to honor in good faith its obligation under their agreement.

3. **ID.; ID.; ID.; CORRESPONDENT BANK; A CORRESPONDENT BANK MAY BE A NOTIFYING BANK, A NEGOTIATING BANK OR A CONFIRMING BANK DEPENDING ON THE NATURE OF THE OBLIGATIONS ASSUMED; DISTINGUISHED.—** Owing to the complexity of these contracts, there may be a correspondent bank which facilitates the ease of completing the transactions. A correspondent bank may be a notifying bank, a negotiating bank or a confirming bank depending on the nature of the

obligations assumed. A notifying bank undertakes to inform the seller-beneficiary that a letter of credit exists. It may also have the duty of transmitting the letter of credit. As its obligation is limited to this duty, it assumes no liability to pay under the letter of credit. A negotiating bank, on the other hand, purchases drafts at a discount from the seller-beneficiary and presents them to the issuing bank for payment. Prior to negotiation, a negotiating bank has no obligation. A contractual relationship between the negotiating bank and the seller-beneficiary arises only after the negotiating bank purchases or discounts the drafts. Meanwhile, a confirming bank may honor the letter of credit issued by another bank or confirms that the letter of credit will be honored by the issuing bank. A confirming bank essentially insures that the credit will be paid in accordance with the terms of the letter of credit. It therefore assumes a direct obligation to the seller-beneficiary. Parenthetically, when banks are involved in letters of credit transactions, the standard of care imposed on banks engaged in business imbued with public interest applies to them. Banks have the duty to act with the highest degree of diligence in dealing with clients. Thus, in dealing with the parties in a letter of credit, banks must also observe this degree of care.

4. **CIVIL LAW; OBLIGATIONS; WHEN DELAY TO DELIVER OR TO DO SOMETHING INCURRED; EFFECT OF THE DUE PRESENTMENT OF LETTER OF CREDIT AND ATTACHED DOCUMENT, EXPLAINED; APPLICATION IN CASE AT BAR.—** HSBC's persistent refusal to comply with its obligation notwithstanding due presentment constitutes delay contemplated in Article 1169 of the Civil Code. This provision states that a party to an obligation incurs in delay from the time the other party makes a judicial or extrajudicial demand for the fulfillment of the obligation. We rule that the due presentment of the Letter of Credit and the attached documents is tantamount to a demand. HSBC incurred in delay when it failed to fulfill its obligation despite such a demand. Under Article 1170 of the Civil Code, a party in delay is liable for damages. The extent of these damages pertains to the pecuniary loss duly proven. In this case, such damage refers to the losses which NSC incurred in the amount of US$485,767.93 as stated in the Letter of Credit. We also award interest as indemnity for the damages incurred in the amount of six percent (6%) from the date of NSC's extrajudicial demand.

An interest in the amount of six percent (6%) is also awarded from the time of the finality of this decision until full payment. Having been remiss in its obligations under the applicable law, rules and jurisprudence, HSBC only has itself to blame for its consequent liability to NSC.

5. **ID.; DAMAGES; ATTORNEY'S FEES; THE AWARD OF ATTORNEY'S FEES MUST HAVE SUFFICIENT FACTUAL AND LEGAL JUSTIFICATION; RATIONALE. —** This Court has explained that the award of attorney's fees is an exception rather than the rule. The winning party is not automatically entitled to attorney's fees as there should be no premium on the right to litigate. While courts may exercise discretion in granting attorney's fees, this Court has stressed that the grounds used as basis for its award must approximate as closely as possible the enumeration in Article 2208. Its award must have sufficient factual and legal justifications. This Court rules that none of the grounds stated in Article 2208 are present in this case. NSC has not cited any specific ground nor presented any particular fact to warrant the award of attorney's fees.

APPEARANCES OF COUNSEL

Feria Tantoco Robeniol Law Offices for petitioner.
Reyno Tiu Domingo & Santos for respondent National Steel Corp.
Benedicto Verzosa & Burkley for respondent BPI.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner The Hongkong & Shanghai Banking Corporation, Limited (HSBC) filed this petition to assail the Decision of the Court of Appeals (CA) dated November 19, 2007 (Assailed Decision) which reversed the ruling of the Regional Trial Court, Branch 62 of Makati City (RTC Makati) and its Resolution denying HSBC's Motion for Reconsideration dated June 23, 2008 (Assailed Resolution).

The Facts

Respondent National Steel Corporation (NSC) entered into an Export Sales Contract (the Contract) with Klockner East Asia Limited (Klockner) on October 12, 1993.[1] NSC sold 1,200 metric tons of prime cold rolled coils to Klockner under FOB ST Iligan terms. In accordance with the requirements in the Contract, Klockner applied for an irrevocable letter of credit with HSBC in favor of NSC as the beneficiary in the amount of US$468,000. On October 22, 1993, HSBC issued an irrevocable and onsight letter of credit no. HKH 239409 (the Letter of Credit) in favor of NSC.[2] The Letter of Credit stated that it is governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, Publication No. 400 (UCP 400). Under UCP 400, HSBC as the issuing bank, has the obligation to immediately pay NSC upon presentment of the documents listed in the Letter of Credit.[3] These documents are: (1) one original commercial invoice; (2) one packing list; (3) one non-negotiable copy of clean on board ocean bill of lading made out to order, blank endorsed marked 'freight collect and notify applicant;' (4) copy of Mill Test Certificate made out 'to whom it may concern;' (5) copy of beneficiary's telex to applicant (Telex No. 86660 Klock HX) advising shipment details including D/C No., shipping marks, name of vessel, port of shipment, port of destination, bill of lading date, sailing and ETA dates, description of goods, size, weight, number of packages and value of goods latest two days after shipment date; and (6) beneficiary's certificate certifying that (a) one set of non-negotiable copies of documents (being those listed above) have been faxed to applicant (FAX No. 5294987) latest two days after shipment date; and (b) one set of documents including one copy each of invoice and packing list, 3/3 original bills of lading plus one non-negotiable copy

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[1] *Rollo,* p. 362.

[2] *Id.*

[3] *Rollo,* p. 133.

and three original Mill Test Certificates have been sent to applicant by air courier service latest two days after shipment date.[4]

The Letter of Credit was amended twice to reflect changes in the terms of delivery. On November 2, 1993, the Letter of Credit was first amended to change the delivery terms from FOB ST Iligan to FOB ST Manila and to increase the amount to US$488,400.[5] It was subsequently amended on November 18, 1993 to extend the expiry and shipment date to December 8, 1993.[6] On November 21, 1993, NSC, through Emerald Forwarding Corporation, loaded and shipped the cargo of prime cold rolled coils on board MV Sea Dragon under China Ocean Shipping Company Bill of Lading No. HKG 266001. The cargo arrived in Hongkong on November 25, 1993.[7]

NSC coursed the collection of its payment from Klockner through CityTrust Banking Corporation (CityTrust). NSC had earlier obtained a loan from CityTrust secured by the proceeds of the Letter of Credit issued by HSBC.[8]

On November 29, 1993, CityTrust sent a collection order (Collection Order) to HSBC respecting the collection of payment from Klockner. The Collection Order instructed as follows: (1) deliver documents against payment; (2) cable advice of non-payment with reason; (3) cable advice payment; and (4) remit proceeds via TELEX.[9] The Collection Order also contained the following statement: "Subject to Uniform Rules for the Collection of Commercial Paper Publication No. 322."[10] Further, the Collection Order stated that proceeds should be remitted to

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[4] *Id.* at 132-133.

[5] *Id.* at 362, 525.

[6] *Id.* at 362.

[7] *Id.*

[8] *Id.*

[9] *Rollo,* p. 231.

[10] *Id.*

Standard Chartered Bank of Australia, Ltd., Offshore Branch Manila (SCB-M) which was, in turn, in charge of remitting the amount to CityTrust.[11] On the same date, CityTrust also presented to HSBC the following documents: (1) Letter of Credit; (2) Bill of Lading; (3) Commercial Invoice; (4) Packing List; (5) Mill Test Certificate; (6) NSC's TELEX to Klockner on shipping details; (7) Beneficiary's Certificate of facsimile transmittal of documents; (8) Beneficiary's Certificate of air courier transmittal of documents; and (9) DHL Receipt No. 669988911 and Certificate of Origin.[12]

On December 2, 1993, HSBC sent a cablegram to CityTrust acknowledging receipt of the Collection Order. It also stated that the documents will be presented to "the drawee against payment subject to UCP 322 [Uniform Rules for Collection (URC) 322] as instructed . . ."[13] SCB-M then sent a cablegram to HSBC requesting the latter to urgently remit the proceeds to its account. It further asked that HSBC inform it "if unable to pay"[14] and of the "reasons thereof."[15] Neither CityTrust nor SCB-M objected to HSBC's statement that the collection will be handled under the Uniform Rules for Collection (URC 322).

On December 7, 1993, HSBC responded to SCB-M and sent a cablegram where it repeated that "this bill is being handled subject to [URC] 322 as instructed by [the] collecting bank."[16] It also informed SCB-M that it has referred the matter to Klockner for payment and that it will revert upon the receipt of the amount.[17] On December 8, 1993, the Letter of Credit expired.[18]

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[11] *Id.*

[12] *Rollo,* pp. 125-126.

[13] *Id.* at 232.

[14] *Id.* at 233.

[15] *Id.*

[16] *Rollo,* p. 234.

[17] *Id.*

[18] *Rollo,* p. 38.

On December 10, 1993, HSBC sent another cablegram to SCB-M advising it that Klockner had refused payment. It then informed SCB-M that it intends to return the documents to NSC with all the banking charges for its account.[19] In a cablegram dated December 14, 1993, CityTrust requested HSBC to inform it of Klockner's reason for refusing payment so that it may refer the matter to NSC.[20] HSBC did not respond and CityTrust thus sent a follow-up cablegram to HSBC on December 17, 1993. In this cablegram, CityTrust insisted that a demand for payment must be made from Klockner since the documents "were found in compliance with LC terms and conditions."[21] HSBC replied on the same day stating that in accordance with CityTrust's instruction in its Collection Order, HSBC treated the transaction as a matter under URC 322. Thus, it demanded payment from Klockner which unfortunately refused payment for unspecified reasons. It then noted that under URC 322, Klockner has no duty to provide a reason for the refusal. Hence, HSBC requested for further instructions as to whether it should continue to press for payment or return the documents.[22] CityTrust responded that as advised by its client, HSBC should continue to press for payment.[23]

Klockner continued to refuse payment and HSBC notified CityTrust in a cablegram dated January 7, 1994, that should Klockner still refuse to accept the bill by January 12, 1994, it will return the full set of documents to CityTrust with all the charges for the account of the drawer.[24]

Meanwhile, on January 12, 1994, CityTrust sent a letter to NSC stating that it executed NSC's instructions "to send, ON

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[19] *Id.* at 236.

[20] *Id.* at 237.

[21] *Id.* at 238.

[22] *Id.* at 239.

[23] *Id.* at 240.

[24] *Id.* at 241.

COLLECTION BASIS, the export documents . . ."[25] CityTrust also explained that its act of sending the export documents on collection basis has been its usual practice in response to NSC's instructions in its transactions.[26]

NSC responded to this in a letter dated January 18, 1994.[27] NSC expressed its disagreement with CityTrust's contention that it sent the export documents to HSBC on collection basis. It highlighted that it "negotiated with CityTrust the export documents pertaining to LC No. HKH 239409 of HSBC and it was CityTrust, which wrongfully treated the negotiation, as 'on collection basis.'"[28] NSC further claimed that CityTrust used its own mistake as an excuse against payment under the Letter of Credit. Thus, NSC argued that CityTrust remains liable under the Letter of Credit. It also stated that it presumes that CityTrust has preserved whatever right of reimbursement it may have against HSBC.[29]

On January 13, 1994, CityTrust notified HSBC that it shouId continue to press for payment and to hoId on to the document until further notice.[30]

However, Klockner persisted in its refusal to pay. Thus, on February 17, 1994, HSBC returned the documents to CityTrust.[31] In a letter accompanying the returned documents, HSBC stated that it considered itself discharged of its duty under the transaction. It also asked for payment of handling charges.[32] In response, CityTrust sent a cablegram to HSBC dated February 21, 1994 stating that it is "no longer possible for beneficiary to wait for

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[25] *Id.* at 568.

[26] *Id.*

[27] *Rollo,* p. 223.

[28] *Id.* at 569.

[29] *Id.*

[30] *Rollo,* p. 242.

[31] *Id.* 243.

[32] *Id*.

you to get paid by applicant."[33] It explained that since the documents required under the Letter of Credit have been properly sent to HSBC, Citytrust demanded payment from it. CityTrust also stated, for the first time in all of its correspondence with HSBC, that "re your previous telexes, ICC Publication No. 322 is not applicable."[34] HSBC responded in cablegram dated February 28, 1994.[35] It insisted that CityTrust sent documents which clearly stated that the collection was being made under URC 322. Thus, in accordance with its instructions, HSBC, in the next three months, demanded payment from Klockner which the latter eventually refused. Hence, HSBC stated that it opted to return the documents. It then informed CityTrust that it considered the transaction closed save for the latter's obligation to pay the handling charges.[36]

Disagreeing with HSBC's position, CityTrust sent a cablegram dated March 9, 1994.[37] It insisted that HSBC shouId pay it in accordance with the terms of the Letter of Credit which it issued on October 22, 1993. Under the Letter of Credit, HSBC undertook to reimburse the presenting bank under "ICC 400 upon the presentment of all necessary documents."[38] CityTrust also stated that the reference to URC 322 in its Collection Order was merely in fine print. The Collection Order itself was only pro-forma. CityTrust emphasized that the reference to URC 322 has been "obviously superseded by our specific instructions to 'deliver documents against payment/cable advice non-payment with reason/cable advice payment/remit proceeds via telex' which was typed in on said form."[39] CityTrust also claimed that the controlling document is the Letter of Credit and not the mere

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[33] *Rollo,* p. 244.

[34] *Id.*

[35] *Rollo,* p. 245.

[36] *Id.*

[37] *Rollo,* p. 246.

[38] *Id.*

[39] *Id.*

fine print on the Collection Order.[40] HSBC replied on March 10, 1994.[41] It argued that CityTrust clearly instructed it to collect payment under URC 322, thus, CityTrust can no longer claim a contrary position three months after it made its request. HSBC repeated that the transaction is closed except for CityTrust's obligation to pay for the expenses which HSBC incurred.[42]

Meanwhile, on March 3, 1994, NSC sent a letter to HSBC where it, for the first time, demanded payment under the Letter of Credit.[43] On March 11, 1994, the NSC sent another letter to HSBC through the Office of the Corporate Counsel which served as its final demand. These demands were made after approximately four months from the expiration of the Letter of Credit.

Unable to collect from HSBC, NSC filed a complaint against it for collection of sum of money (Complaint)[44] docketed as Civil Case No. 94- 2122 (Collection Case) of the RTC Makati. In its Complaint, NSC alleged that it coursed the collection of the Letter of Credit through CityTrust. However, notwithstanding CityTrust's complete presentation of the documents in accordance with the requirements in the Letter of Credit, HSBC unreasonably refused to pay its obligation in the amount of US$485,767.93.[45]

HSBC filed its Answer[46] on January 6, 1995. HSBC denied any liability under the Letter of Credit. It argued in its Answer that CityTrust modified the obligation when it stated in its Collection Order that the transaction is subject to URC 322

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[40] *Id*.

[41] *Rollo,* p. 248.

[42] *Id.*

[43] *Rollo,* p. 42.

[44] *Id.* at 123; the complaint was filed on July 8, 1994 but was later amended, *id.* at 44.

[45] *Id.* at 126.

[46] *Id.* at 163-171.

and not under UCP 400.[47] It also filed a Motion to Admit Attached Third-Party Complaint[48] against CityTrust on November 21, 1995.[49] It claimed that CityTrust instructed it to collect payment under URC 322 and never raised that it intended to collect under the Letter of Credit.[50] HSBC prayed that in the event that the court finds it liable to NSC, CityTrust shouId be subrogated in its place and be made directly liable to NSC.[51] The RTC Makati granted the motion and admitted the third party complaint. CityTrust filed its Answer[52] on January 8, 1996. CityTrust denied that it modified the obligation. It argued that as a mere agent, it cannot modify the terms of the Letter of Credit without the consent of all the parties.[53] Further, it explained that the supposed instruction that the transaction is subject to URC 322 was merely in fine print in a pro forma document and was superimposed and pasted over by a large pink sticker with different remittance instructions.[54]

After a full-blown trial,[55] the RTC Makati rendered a decision (RTC Decision) dated February 23, 2000.[56] It found that HSBC is not liable to pay NSC the amount stated in the Letter of Credit. It ruled that the applicable law is URC 322 as it was the law which CityTrust intended to apply to the transaction. Under URC 322, HSBC has no liability to pay when Klockner refused payment. The dispositive portion states —

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[47] *Id.* at 165-169.

[48] *Id.* at 173-180.

[49] *Id.* at 45.

[50] *Id.* at 175-177.

[51] *Id.* at 179.

[52] *Id.* at 186-198.

[53] *Id.* at 188.

[54] *Id.* at 189.

[55] On April 17, 1998, HSBC filed a motion to implead the Bank of the Philippine Islands ("BPI") as third party defendant because of its merger with CityTrust. The RTC Makati granted this motion in an Order dated July 23, 1998, *rollo*, p. 46.

[56] *Rollo,* pp. 361-369.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Plaintiffs Complaint against HSBC is **DISMISSED**; and, HSBC's Counterclaims against NSC are **DENIED**.
2. Ordering Third-Party Defendant CityTrust to pay Third-Party Plaintiff HSBC the following:
   2.1 US$771.21 as actual and consequential damages; and
   2.2 ₱100,000 as attorney's fees.
3. No pronouncement as to costs.

SO ORDERED.[57]

NSC and CityTrust appealed the RTC Decision before the CA. In its Assailed Decision dated November 19, 2007,[58] the CA reversed the RTC Makati. The CA found that it is UCP 400 and not URC 322 which governs the transaction. According to the CA, the terms of the Letter of Credit clearly stated that UCP 400 shall apply. Further, the CA explained that even if the Letter of Credit did not state that UCP 400 governs, it nevertheless finds application as this Court has consistently recognized it under Philippine jurisdiction. Thus, applying UCP 400 and principles concerning letters of credit, the CA explained that the obligation of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are properly presented. Under the independence principle, the issuing bank's obligation to pay under the letter of credit is separate from the compliance of the parties in the main contract. The dispositive portion held—

WHEREFORE, in view of the foregoing, the assailed decision is hereby **REVERSED and SET ASIDE**. HSBC is ordered to pay its obligation under the irrevocable letter of credit in the amount of US$485,767.93 to NSC with legal interest of six percent (6%) per annum from the filing of the complaint until the amount is fully paid, plus attorney's fees equivalent to 10% of the principal. Costs against appellee HSBC.

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[57] *Id.* at 369.

[58] *Id.* at 9-26. Penned by Associate Justice Lucenito N. Tagle with Associate Justices Amelita G. Tolentino and Agustin S. Dizon concurring.

SO ORDERED.[59]

HSBC filed a Motion for Reconsideration of the Assailed Decision which the CA denied in its Assailed Resolution dated June 23, 2008.[60]

Hence, HSBC filed this Petition for Review on Certiorari[61] before this Court, seeking a reversal of the CA's Assailed Decision and Resolution. In its petition, HSBC contends that CityTrust's order to collect under URC 322 did not modify nor contradict the Letter of Credit. In fact, it is customary practice in commercial transactions for entities to collect under URC 322 even if there is an underlying letter of credit. Further, CityTrust acted as an agent of NSC in collecting payment and as such, it had the authority to instruct HSBC to proceed under URC 322 and not under UCP 400. Having clearly and expressly instructed HSBC to collect under URC 322 and having fully intended the transaction to proceed under such rule as shown by the series of correspondence between CityTrust and HSBC, CityTrust is estopped from now claiming that the collection was made under UCP 400 in accordance with the Letter of Credit.

NSC, on the other hand, claims that HSBC's obligation to pay is clear from the terms of the Letter of Credit and under UCP 400. It asserts that the applicable rule is UCP 400 and HSBC has no basis to argue that CityTrust's presentment of the documents allowed HSBC to vary the terms of their agreement.[62]

The Issues

The central question in this case is who among the parties bears the liability to pay the amount stated in the Letter of Credit. This requires a determination of which between UCP 400 and

[59] *Rollo,* p. 25.

[60] *Id.* at 28-29.

[61] *Id.* at 32-90.

[62] *Id.* at 529-530.

URC 322 governs the transaction. The obligations of the parties under the proper applicable tule will, in turn, determine their liability.

The Ruling of the Court

We uphoId the CA.

The nature of a letter of credit

A letter of credit is a commercial instrument developed to address the unique needs of certain commercial transactions. It is recognized in our jurisdiction and is sanctioned under Article 567[63] of the Code of Commerce and in numerous jurisprudence defining a letter of credit, the principles relating to it, and the obligations of parties arising from it.

In *Bank of America, NT & SA v. Court of Appeals,*[64] this Court defined a letter of credit as "... a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying."[65] Through a letter of credit, a buyer obtains the credit of a third party, usually a bank, to provide assurance of payment.[66] This, in turn, convinces a seller to part with his or her goods even before he or she is paid, as he or she is insured by the third party that he or she will be paid as soon as he or she presents the documents agreed upon.[67]

A letter of credit generally arises out of a separate contract requiring the assurance of payment of a third party. In a transaction involving a letter of credit, there are usually three

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[63] Article 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

[64] G.R. No. 105395, December 10, 1993, 228 SCRA 357.

[65] *Id.* at 365.

[66] Christopher Leon, *Letters of Credit: A Primer,* 45 Md. L. Rev. 432 (1986).

[67] *Id.*

transactions and three parties. The first transaction, which constitutes the underlying transaction in a letter of credit, is a contract of sale between the buyer and the seller. The contract may require that the buyer obtain a letter of credit from a third party acceptable to the seller. The obligations of the parties under this contract are governed by our law on sales.

The second transaction is the issuance of a letter of credit between the buyer and the issuing bank. The buyer requests the issuing bank to issue a letter of credit naming the seller as the beneficiary. In this transaction, the issuing bank undertakes to pay the seller upon presentation of the documents identified in the letter of credit. The buyer, on the other hand, obliges himself or herself to reimburse the issuing bank for the payment made. In addition, this transaction may also include a fee for the issuing bank's services.[68] This transaction constitutes an obligation on the part of the issuing bank to perform a service in consideration of the buyer's payment. The obligations of the parties and their remedies in cases of breach are governed by the letter of credit itself and by our general law on obligations, as our civil law finds suppletory application in commercial documents.[69]

The third transaction takes place between the seller and the issuing bank. The issuing bank issues the letter of credit for the benefit of the seller. The seller may agree to ship the goods to the buyer even before actual payment provided that the issuing bank informs him or her that a letter of credit has been issued for his or her benefit. This means that the seller can draw drafts from the issuing bank upon presentation of certain documents identified in the letter of credit. The relationship between the issuing bank and the seller is not strictly contractual since there

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[68] G. Hamp Uzzelle III, *Letters of Credit,* 10 Tul. Mar. L. J. 47 (1985).

[69] CODE OF COMMERCE, Art. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction and to the capacity of the contracting parties shall be governed in all that is not expressly established in this Code or in special laws, by the general rules of civil law.

is no privity of contract nor meeting of the minds between them.[70] It also does not constitute a stipulation *pour autrui* in favor of the seller since the issuing bank must honor the drafts drawn against the letter of credit regardless of any defect in the underlying contract.[71] Neither can it be considered as an assignment by the buyer to the seller-beneficiary as the buyer himself cannot draw on the letter.[72] From its inception, only the seller can demand payment under the letter of credit. It is also not a contract of suretyship or guaranty since it involves primary liability in the event of default.[73] Nevertheless, while the relationship between the seller-beneficiary and the issuing bank is not strictly contractual, strict payment under the terms of a letter of credit is an enforceable right.[74] This enforceable right finds two legal underpinnings. First, letters of credit, as will be further explained, are governed by recognized international norms which dictate strict compliance with its terms. Second, the issuing bank has an existing agreement with the buyer to pay the seller upon proper presentation of documents. Thus, as the law on obligations applies even in commercial documents[75] the issuing bank has a duty to the buyer to honor in good faith its obligation under their agreement. As will be seen in the succeeding discussion, this transaction is also governed by international customs which this Court has recognized in this jurisdiction.[76]

In simpler terms, the various transactions that give rise to a letter of credit proceed as follows: Once the seller ships the goods, he or she obtains the documents required under the letter of credit. He or she shall then present these documents to the

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[70] *TransfieId Philippines, Inc. v. Luzon Hydro Corporation,* G.R. No. 146717, November 22, 2004, 443 SCRA 307, 325.

[71] *Id.* at 325-326.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] CODE OF COMMERCE, Art. 50.

[76] *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc.,* G.R. No. L-24821, October 16, 1970, 35 SCRA 576.

issuing bank which must then pay the amount identified under the letter of credit after it ascertains that the documents are complete. The issuing bank then hoIds on to these documents which the buyer needs in order to claim the goods shipped. The buyer reimburses the issuing bank for its payment at which point the issuing bank releases the documents to the buyer. The buyer is then able to present these documents in order to claim the goods. At this point, all the transactions are completed. The seller received payment for his or her performance of his obligation to deliver the goods. The issuing bank is reimbursed for the payment it made to the seller. The buyer received the goods purchased.

Owing to the complexity of these contracts, there may be a correspondent bank which facilitates the ease of completing the transactions. A correspondent bank may be a notifying bank, a negotiating bank or a confirming bank depending on the nature of the obligations assumed.[77] A notifying bank undertakes to inform the seller-beneficiary that a letter of credit exists. It may also have the duty of transmitting the letter of credit. As its obligation is limited to this duty, it assumes no liability to pay under the letter of credit.[78] A negotiating bank, on the other hand, purchases drafts at a discount from the seller-beneficiary and presents them to the issuing bank for payment.[79] Prior to negotiation, a negotiating bank has no obligation. A contractual relationship between the negotiating bank and the seller-beneficiary arises only after the negotiating bank purchases or discounts the drafts.[80] Meanwhile, a confirming bank may honor the letter of credit issued by another bank or confirms that the letter of credit will be honored by the issuing bank.[81] A confirming bank essentially insures that the credit will be paid in accordance

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[77] *Feati Bank & Trust Company v. Court of Appeals,* G.R. No. 94209, April 30, 1991, 196 SCRA 576.

[78] *Id.* at 589.

[79] Christopher Leon, *Letters of Credit: A Primer,* 45 Md. L. Rev. 432 (1986).

[80] *Feati Bank & Trust Company v. Court of Appeals, supra.*

[81] Christopher Leon, *Letters of Credit: A Primer,* 45 Md. L. Rev. 432 (1986).

with the terms of the letter of credit.[82] It therefore assumes a direct obligation to the seller-beneficiary.[83]

Parenthetically, when banks are involved in letters of credit transactions, the standard of care imposed on banks engaged in business imbued with public interest applies to them. Banks have the duty to act with the highest degree of diligence in dealing with clients.[84] Thus, in dealing with the parties in a letter of credit, banks must also observe this degree of care.

The value of letters of credit in commerce hinges on an important aspect of such a commercial transaction. Through a letter of credit, a seller-beneficiary is assured of payment regardless of the status of the underlying transaction. International contracts of sales are perfected and consummated because of the certainty that the seller will be paid thus making him or her willing to part with the goods even prior to actual receipt of the amount agreed upon. The legally demandable obligation of an issuing bank to pay under the letter of credit, and the enforceable right of the seller-beneficiary to demand payment, are indispensable essentials for the system of letters of credit, if it is to serve its purpose of facilitating commerce. Thus, a touchstone of any law or custom governing letters of credit is an emphasis on the imperative that issuing banks respect their obligation to pay, and that seller-beneficiaries may reasonably expect payment, in accordance with the terms of a letter of credit.

Rules applicable to letters of credit

Letters of credit are defined and their incidences regulated by Articles 567 to 572[85] of the Code of Commerce. These

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[82] Dong-heon Chae, *Letters of Credit and the Uniform Customs and Practice for Documentary Credits: The Negotiating Bank and the Fraud Rule in Korea Supreme Court,* Case 96 DA 43713, 12 Fla. J. Int'l L. 23 (1986).

[83] *Feati Bank & Trust Company v. Court of Appeals, supra* at 589.

[84] *Far East Bank and Trust Company v. Tentmakers Group, Inc.,* G.R. No. 171050, July 4, 2012, 675 SCRA 546.

[85] Art. 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

provisions must be read with Article 2[86] of the same code which states that acts of commerce are governed by their provisions, by the usages and customs generally observed in the particular place and, in the absence of both rules, by civil law. In addition, Article 50[87] also states that commercial contracts shall be governed by the Code of Commerce and special laws and in their absence, by general civil law.

Art. 568. The essential conditions of letters of credit shall be:

1. To be issued in favor of a determined person and not to order.
2. To be limited to a fixed and specified amount, or to one or more indeterminate amounts, but all within a maximum sum the limit of which must be exactly stated.

Letters of credit which do not have one of these conditions shall be considered simply as letters of recommendation.

Art. 569. One who issues a letter of credit shall be liable to the person on whom it was issued for the amount paid by virtue of the same within the maximum fixed therein.

Letters of credit cannot be protested, even when not paid, nor can the hoIder thereof acquire any right of action for said non-payment against the person who issued it.

The payor shall have a right to demand the proof of the identity of the person in whose favor the letter of credit was issued.

Art. 570. The drawer of a letter of credit may annul it, informing the bearer and the person to whom it is addressed of said revocation.

Art. 571. The hoIder of a letter of credit shall pay the drawer the amount received without delay.

ShouId he not do so, an action including attachment may be brought to recover said amount with the legal interest and the current exchange in the place where the payment was made, on the place where it was repaid.

Art. 572. If the hoIder of a letter of credit does not make use thereof within the period agreed upon with the drawer of the same, or, in the absence of a fixed period, within six months from its date in any point of the Philippines, and within twelve months outside thereof, it shall be void in fact and in law.

[86] CODE OF COMMERCE, Art. 2. Commercial transactions, whether performed by merchants or not, and whether or not specified in this Code, shall be governed by provisions contained herein; in default of such provisions, by the commercial usages generally observed in each place and in the absence of both, by rules of the civil law.

[87] CODE OF COMMERCE, Art. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction and to the capacity of the contracting parties shall be governed

The International Chamber of Commerce (ICC)[88] drafted a set of rules to govern transactions involving letters of credit. This set of rules is known as the Uniform Customs and Practice for Documentary Credits (UCP). Since its first issuance in 1933, the UCP has seen several revisions, the latest of which was in 2007, known as the UCP 600. However, for the period relevant to this case, the prevailing version is the 1993 revision called the UCP 400. Throughout the years, the UCP has grown to become the worldwide standard in transactions involving letters of credit.[89] It has enjoyed near universal application with an estimated 95% of worldwide letters of credit issued subject to the UCP.[90]

In *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc.,*[91] this Court applied a provision from the UCP in resolving a case pertaining to a letter of credit transaction. This Court explained that the use of international custom in our jurisdiction is justified by Article 2 of the Code of Commerce which provides that acts of commerce are governed by, among others, usages and customs generally observed. Further, in *Feati Bank & Trust Company v. Court of Appeals,*[92] this Court ruled that the UCP should be applied in cases where the letter of credit expressly

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in all that is not expressly established in this Code or in special laws, by the general rules of civil law.

[88] The International Chamber of Commerce is a private international organization composed of companies and business organizations worldwide. Throughout the years, it has been recognized as a representative of private business in international trade. It has also been awarded the highest level consultative status by the United Nations in 1946 and has continued to be influential in international commerce. The ICC drafts rules that governs conduct of business across borders. This rules are voluntary but have been consistently observed by businesses all over the world. *See* <www.iccwbo.org/about-icc> (last accessed on January 26, 2016).

[89] Ross P. Buckley, *The 1993 Revision of the Uniform Customs and Practice for Documentary Credits,* 28 GW J. lnt’l L. & Econ. 265 (1995).

[90] *Id.*

[91] *Supra* note 76 at 259-261.

[92] G.R. No. 94209, April 30, 1991, 196 SCRA 576.

states that it is the governing rule.[93] This Court also held in *Feati* that the UCP applies even if it is not incorporated into the letter of the credit.[94] The application of the UCP in *Bank of Philippine Islands* and in *Feati* was further affirmed in *Metropolitan Waterworks and Sewerage System v. Daway*[95] where this Court held that "[l]etters of credit have long been and are still governed by the provisions of the Uniform Customs and Practice for Documentary Credit[s] of the International Chamber of Commerce."[96] These precedents highlight the binding nature of the UCP in our jurisdiction.

Thus, for the purpose of clarity, letters of credit are governed primarily by their own provisions,[97] by laws specifically applicable to them,[98] and by usage and custom.[99] Consistent with our rulings in several cases,[100] usage and custom refers to

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[93] *Id.* at 586.

[94] *Id.* at 587.

[95] G.R. No. 160732, June 21, 2004, 432 SCRA 559.

[96] *Id.* at 569-570. The pertinent portion of the decision reads:

We have accepted, in *Feati Bank and Trust Company v. Court of Appeals* and *Bank of America NT & SA v. Court of Appeals,* to the extent that they are pertinent, the application in our jurisdiction of the international credit regulatory set of rules known as the Uniform Customs and Practice for Documentary Credits (U.C.P) issued by the International Chamber of Commerce, which we said in *Bank of the Philippines Islands v. Nery (sic)* was justified under Art. 2 of the Code of Commerce, which states:

> "Acts of commerce, whether those who execute them to be merchants or not, and whether specified in this Code or not should be governed by the provisions contained in it; in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law."

[97] CODE OF COMMERCE, Art. 2.

[98] CODE OF COMMERCE, Art. 50; *Feati Bank & Trust Company v. Court of Appeals, supra* at 587.

[99] CODE OF COMMERCE, Art. 2.

[100] *Transfield Philippines, Inc. v. Luzon Hydro Corporation,* G.R. No. 146717, November 22, 2004, 443 SCRA 307; *Metropolitan Waterworks and Sewerage System v. Daway,* G.R. No. 160732, June 21, 2004, 432 SCRA 559;

UCP 400. When the particular issues are not covered by the provisions of the letter of credit, by laws specifically applicable to them and by UCP 400, our general civil law finds suppletory application.[101]

Applying this set of laws and rules, this Court rules that HSBC is liable under the provisions of the Letter of Credit, in accordance with usage and custom as embodied in UCP 400, and under the provisions of general civil law.

HSBC's Liability

The Letter of Credit categorically stated that it is subject to UCP 400, to wit:

> Except so far as otherwise expressly stated, this documentary credit is subject to uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400.[102]

From the moment that HSBC agreed to the terms of the Letter of Credit — which states that UCP 400 applies — its actions in connection with the transaction automatically became bound by the rules set in UCP 400. Even assuming that URC 322 is an international custom that has been recognized in commerce, this does not change the fact that HSBC, as the issuing bank of a letter of credit, undertook certain obligations dictated by the terms of the Letter of Credit itself and by UCP 400. In *Feati,* this Court applied UCP 400 even when there is no express stipulation in the letter of credit that it governs the transaction.[103] On the strength of our ruling in *Feati,* we have the legal duty to apply UCP 400 in this case independent of the parties' agreement to be bound by it.

Lee v. Court of Appeals, G.R. No. 117913, February 1, 2002, 375 SCRA 579; *Bank of America, NT & SA v. Court of Appeals,* G.R. No. 105395, December 10, 1993, 228 SCRA 357; *Feati Bank & Trust Company v. Court of Appeals, supra.*

[101] CODE OF COMMERCE, Arts. 2 & 50.

[102] *Rollo,* p. 133.

[103] *Supra* note 77 at 587.

UCP 400 states that an irrevocable credit payable on sight, such as the Letter of Credit in this case, constitutes a definite undertaking of the issuing bank to pay, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with.[104] Further, UCP 400 provides that an issuing bank has the obligation to examine the documents with reasonable care.[105] Thus, when CityTrust forwarded the Letter of Credit with the attached documents to HSBC, it had the duty to make a determination of whether its obligation to pay arose by properly examining the documents.

In its petition, HSBC argues that it is not UCP 400 but URC 322 that should govern the transaction.[106] URC 322 is a set of norms compiled by the ICC.[107] It was drafted by international experts and has been adopted by the ICC members. Owing to the status of the ICC and the international representation of its membership, these rules have been widely observed by businesses throughout the worId. It prescribes the collection procedures, technology, and standards for handling collection transactions for banks.[108] Under the facts of this case, a bank acting in accordance with the terms of URC 322 merely facilitates collection. Its duty is

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[104] Uniform Customs and Practice For Documentary Credits 400, Art. 10 (a). An irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with:

(i) if the credit provides for sight payment — to pay, or that payment will be made; x x x.

[105] Uniform Customs and Practice For Documentary Credits 400, Art. 15. Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

[106] *Rollo,* pp. 54-71.

[107] ICC Uniform Rules for Collections, available at <store.iccwbo.org/Content/uploaded/pdf/ICC-Uniform-Rules-for-Collections.pdf> (last accessed on January 18, 2016).

[108] *Id.*

to forward the letter of credit and the required documents from the entity seeking payment to another entity which has the duty to pay. The bank incurs no obligation other than as a collecting agent. This is different in the case of an issuing bank acting in accordance with UCP 400. In this case, the issuing bank has the duty to pay the amount stated in the letter of credit upon due presentment. HSBC claims that while UCP 400 applies to letters of credit, it is also common for beneficiaries of such letters to seek collection under URC 322. HSBC further claims that URC 322 is an accepted custom in commerce.[109]

HSBC's argument is without merit. We note that HSBC failed to present evidence to prove that URC 322 constitutes custom and usage recognized in commerce. Neither was there sufficient evidence to prove that beneficiaries under a letter of credit commonly resort to collection under URC 322 as a matter of industry practice. HSBC claims that the testimony of its witness Mr. Lincoln MacMahon (Mr. MacMahon) suffices for this purpose.[110] However, Mr. MacMahon was not presented as an expert witness capable of establishing the existing banking and commercial practice relating to URC 322 and letters of credit. Thus, this Court cannot hoId that URC 322 and resort to it by beneficiaries of letters of credit are customs that demand application in this case.[111]

HSBC's position that URC 322 applies, thus allowing it, the issuing bank, to disregard the Letter of Credit, and merely demand collection from Klockner cannot be countenanced. Such an argument effectively asks this Court to give imprimatur to a practice that undermines the value and reliability of letters of credit in trade and commerce. The entire system of letters of credit rely on the assurance that upon presentment of the proper documents, the beneficiary has an enforceable right and the

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[109] *Rollo,* pp. 60-61.

[110] *Id.* at 57-59.

[111] *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc., supra* note 76 at 261.

issuing bank a demandable obligation, to pay the amount agreed upon. Were a party to the transaction allowed to simply set this aside by the mere invocation of another set of norms related to commerce — one that is not established as a custom that is entitled to recognition by this Court — the sanctity of letters of credit will be jeopardized. To repeat, any law or custom governing letters of credit shouId have, at its core, an emphasis on the imperative that issuing banks respect their obligation to pay and that seller-beneficiaries may reasonably expect payment in accordance with the terms of a letter of credit. Thus, the CA correctly ruled, to wit:

> At this juncture, it is significant to stress that an irrevocable letter of credit cannot, during its lifetime, be cancelled or modified without the express permission of the beneficiary. Not even partial payment of the obligation by the applicant-buyer wouId amend or modify the obligation of the issuing bank. The subsequent correspondences of [CityTrust] to HSBC, thus, couId not in any way affect or amend the letter of credit, as it was not a party thereto. As a notifying bank, it has nothing to do with the contract between the issuing bank and the buyer regarding the issuance of the letter of credit.[112] (Citations omitted)

The provisions in the Civil Code and our jurisprudence apply suppletorily in this case.[113] When a party knowingly and freely binds himself or herself to perfonn an act, a juridical tie is created and he or she becomes bound to fulfill his or her obligation. In this case, HSBC's obligation arose from two sources. First, it has a contractual duty to Klockner whereby it agreed to pay NSC upon due presentment of the Letter of Credit and the attached documents. Second, it has an obligation to NSC to honor the Letter of Credit. In complying with its obligation, HSBC had the duty to perform all acts necessary. This includes a proper examination of the documents presented to it and making a judicious inquiry of whether CityTrust, in behalf of NSC, made a due presentment of the Letter of Credit.

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[112] *Rollo,* p. 18.

[113] CODE OF COMMERCE, Art. 50.

Further, as a bank, HSBC has the duty to observe the highest degree of diligence. In all of its transactions, it must exercise the highest standard of care and must fulfill its obligations with utmost fidelity to its clients. Thus, upon receipt of CityTrust's Collection Order with the Letter of Credit, HSBC had the obligation to carefully examine the documents it received. Had it observed the standard of care expected of it, HSBC wouId have discovered that the Letter of Credit is the very same document which it issued upon the request of Klockner, its client. Had HSBC taken the time to perform its duty with the highest degree of diligence, it wouId have been alerted by the fact that the documents presented to it corresponded with the documents stated in the Letter of Credit, to which HSBC freely and knowingly agreed. HSBC ought to have noticed the discrepancy between CityTrust's request for collection under URC 322 and the tenns of the Letter of Credit. Notwithstanding any statements by CityTrust in the Collection Order as to the applicable rules, HSBC had the independent duty of ascertaining whether the presentment of the Letter of Credit and the attached documents gave rise to an obligation which it had to Klockner (its client) and NSC (the beneficiary). Regardless of any error that CityTrust may have committed, the standard of care expected of HSBC dictates that it should have made a separate determination of the significance of the presentment of the Letter of Credit and the attached documents. A bank exercising the appropriate degree of diligence wouId have, at the very least, inquired if NSC was seeking payment under the Letter of Credit or merely seeking collection under URC 322. In failing to do so, HSBC fell below the standard of care imposed upon it.

This Court therefore rules that CityTrust's presentment of the Letter of Credit with the attached documents in behalf of NSC, constitutes due presentment. Under the terms of the Letter of Credit, HSBC undertook to pay the amount ofUS$485,767.93 upon presentment ofthe Letter of Credit and the required documents.[114] In accordance with this agreement, NSC, through

[114] The following are the required documents as provided in the Letter of Credit: (1) one original commercial invoice; (2) one packing list; (3) one

CityTrust, presented the Letter of Credit and the following documents: (1) Letter of Credit; (2) Bill of Lading; (3) Commercial Invoice; (4) Packing List; (5) Mill Test Certificate; (6) NSC's TELEX to Klockner on shipping details; (7) Beneficiary's Certificate of facsimile transmittal of documents; (8) Beneficiary's Certificate of air courier transmittal of documents; and (9) DHL Receipt No. 669988911 and Certificate of Origin.[115]

In transactions where the letter of credit is payable on sight, as in this case, the issuer must pay upon due presentment. This obligation is imbued with the character of definiteness in that not even the defect or breach in the underlying transaction will affect the issuing bank's liability.[116] This is the Independence Principle in the law on letters of credit. Article 17 of UCP 400 explains that under this principle, an issuing bank assumes no liability or responsibility "for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon . . ." Thus, as long as the proper documents are presented, the issuing bank has an obligation to pay even if the buyer should later on refuse payment. Hence, Klockner's refusal to pay carries no effect whatsoever on HSBC's obligation to pay under the Letter of Credit. To allow HSBC

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non-negotiable copy of clean on board ocean bill of lading made out to order, blank endorsed marked 'freight collect' and 'notify applicant;' (4) copy of Mill Test Certificate made out 'to whom it may concern;' (5) copy of beneficiary's telex to applicant (Telex No. 86660 Klock HX) advising shipment details including D/C No., shipping marks, name of vessel, port of shipment, port of destination, bill of lading date, sailing and ETA dates, description of goods, size, weight, number of packages and value of goods latest two days after shipment date; and (6) beneficiary's certificate certifying that: (a) one set of non-negotiable copies of documents (being those listed above) have been faxed to applicant (FAX No. 5294987) latest two days after shipment date; and (b) one set of documents including one copy each of invoice and packing list, 3/3 original bills of lading plus one non-negotiable copy and three original Mill Test Certificates have been sent to applicant by air courier service latest two days after shipment date, *rollo,* pp. 132-133.

[115] *Rollo,* pp. 125-126.

[116] Uniform Customs and Practice For Documentary Credits 400, Art. 3.

to refuse to honor the Letter of Credit simply because it could not collect first from Klockner is to countenance a breach of the Independence Principle.

HSBC's persistent refusal to comply with its obligation notwithstanding due presentment constitutes delay contemplated in Article 1169 of the Civil Code.[117] This provision states that a party to an obligation incurs in delay from the time the other party makes a judicial or extrajudicial demand for the fulfillment of the obligation. We rule that the due presentment of the Letter of Credit and the attached documents is tantamount to a demand. HSBC incurred in delay when it failed to fulfill its obligation despite such a demand.

Under Article 1170 of the Civil Code,[118] a party in delay is liable for damages. The extent of these damages pertains to the pecuniary loss duly proven.[119] In this case, such damage refers to the losses which NSC incurred in the amount of US$485,767.93 as stated in the Letter of Credit. We also award interest as indemnity for the damages incurred in the amount of six percent

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[117] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or
(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
(3) When demand wouId be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[118] Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[119] CIVIL CODE, Art. 2199.

(6%) from the date of NSC's extrajudicial demand.[120] An interest in the amount of six percent (6%) is also awarded from the time of the finality of this decision until full payment.[121]

Having been remiss in its obligations under the applicable law, rules and jurisprudence, HSBC only has itself to blame for its consequent liability to NSC.

However, this Court finds that there is no basis for the CA's grant of attorney's fees in favor of NSC. Article 2208 of the Civil Code[122] enumerates the grounds for the award of attorney's fees. This Court has explained that the award of attorney's fees is an exception rather than the rule.[123] The winning party is not

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[120] CIVIL CODE, Art. 2209; *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[121] *Nacar v. Gallery Frames, supra.*

[122] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[123] *Republic v. Lorenzo Shipping Corporation,* G.R. No. 153563, February 7, 2005, 450 SCRA 550; *Padillo v. Court of Appeals,* G.R. No. 119707, November 29, 2001, 371 SCRA 27.

automatically entitled to attorney's fees as there shouId be no premium on the right to litigate.[124] While courts may exercise discretion in granting attorney's fees, this Court has stressed that the grounds used as basis for its award must approximate as closely as possible the enumeration in Article 2208.[125] Its award must have sufficient factual and legal justifications.[126] This Court rules that none of the grounds stated in Article 2208 are present in this case. NSC has not cited any specific ground nor presented any particular fact to warrant the award of attorney's fees.

CityTrust's Liability

When NSC obtained the services of CityTrust in collecting under the Letter of Credit, it constituted CityTrust as its agent. Article 1868 of the Civil Code states that a contract of agency exists when a person binds himself or herself "to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." In this case, CityTrust bound itself to collect under the Letter of Credit in behalf of NSC.

One of the obligations of an agent is to carry out the agency in accordance with the instructions of the principal.[127] In ascertaining NSC's instructions to CityTrust, its letter dated January 18, 1994 is determinative. In this letter, NSC clearly stated that it "negotiated with CityTrust the export documents pertaining to LC No. HKH 239409 of HSBC and it was CityTrust which wrongfully treated the negotiation as 'on collection basis."'[128] HSBC persistently communicated with CityTrust and consistently repeated that it will proceed with collection under URC 322. At no point did CityTrust correct HSBC or seek

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[124] *Padillo v. Court of Appeals, supra.*

[125] *Republic v. Lorenzo Shipping Corporation, supra.*

[126] *Id.*

[127] CIVIL CODE, Art. 1887.

[128] *Rollo,* p. 223.

clarification from NSC. In insisting upon its course of action, CityTrust failed to act in accordance with the instructions given by NSC, its principal. Nevertheless while this Court recognizes that CityTrust committed a breach of its obligation to NSC, this carries no implications on the clear liability of HSBC. As this Court already mentioned, HSBC had a separate obligation that it failed to perform by reason of acts independent of CityTrust's breach of its obligation under its contract of agency. If CityTrust has incurred any liability, it is to its principal NSC. However, NSC has not raised any claim against CityTrust at any point in these proceedings. Thus, this Court cannot make any finding of liability against CityTrust in favor of NSC.

WHEREFORE, in view of the foregoing, the Assailed Decision dated November 19, 2007 is **AFFIRMED** to the extent that it orders HSBC to pay NSC the amount of US$485,767.93. HSBC is also liable to pay legal interest of six percent (6%) per annum from the time of extrajudicial demand. An interest of six percent (6%) is also awarded from the time of the finality of this decision until the amount is fully paid. We delete the award of attorney's fees. No pronouncement as to cost.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183529. February 24, 2016]

OFELIA C. CAUNAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and the SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE *SANDIGANBAYAN* ARE CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS.—** "It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; [and] (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record. None of the above exceptions obtains in this case."
2. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION UNDER SECTION 3(E); ELEMENTS.—** The charge against Caunan is violation of Section 3(e) of R.A. No. 3019, which provides: x x x To be found guilty under the said provision, the following elements must concur: 1) The accused must be a public officer discharging administrative, judicial or official functions; 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3) That his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Office for petitioner.
Office of the Special Prosecutor for public respondents.

D E C I S I O N

REYES, *J.*:

For review is the Decision[1] dated April 29, 2008 of the Sandiganbayan in Criminal Case No. 28068, finding Ofelia

[1] Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Samuel R. Martires concurring; *rollo*, pp. 78-96.

Caunan (Caunan) guilty of violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act." The case involves the government's purchase and payment of equipment not delivered; a transaction dubbed as "ghost delivery."

Facts of the Case

On August 15, 2000, Dra. Magnolia Punzalan (Punzalan), as the then Chairman of Barangay Marcelo Green, requested for the purchase of Compost Garbage and Recycling Equipment (compost equipment) from the City Government of Parañaque (City Government), intended to be used in their barangay. However, her request was not acted upon even after she finished her term in 2002. On July 20, 2002, Dante Pacheco (Pacheco) succeeded Punzalan and assumed his post as the Chairman of Barangay Marcelo Green. Like his predecessor Punzalan, Pacheco requested for the purchase of compost equipment for their barangay.[2]

In September 2002, the Office of the City Auditor of Parañaque (Office of the City Auditor) conducted an investigation on the City Government's reported purchase of 14 sets of compost equipment worth ₱6,287,500.00 in the year 2000. As part of the investigation, state auditors sent letters of inquiry[3] to barangay captains to confirm the delivery of compost equipment to their respective barangays in the year 2000.[4]

Punzalan was alerted of the ongoing investigation when Pacheco furnished her with a copy of his reply[5] to the state auditor. In the letter, Pacheco stated that Punzalan did not turn over to him any compost equipment she received during her tenure. Punzalan also received a similar letter of inquiry from the Office of the City Auditor.[6] In a letter[7] dated October 21,

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[2] *Id*. at 81, 83-84.

[3] Exhibit "C-2", folder of exhibits, p. 5.

[4] *Rollo*, p. 124.

[5] Exhibit "C", folder of exhibits, p. 4.

[6] *Rollo*, p. 125.

[7] Exhibit "N- 28", folder of exhibits, p. 68.

2002, Punzalan repudiated that she received the delivery of compost equipment in Barangay Marcelo Green; she likewise disclaimed the signature purporting to be hers on the documents attached to the letter of inquiry.

The foregoing events led Punzalan to visit the Office of the City Auditor where she discovered the existence of documents relative to the purchase and delivery of compost equipment to Barangay Marcelo Green during her term of office.[8] The following documents were uncovered: (1) Purchase Order (P.O.) No. 0005031 was issued naming Julia Enterprises and General Merchandise (Julia Enterprises) as the supplier/dealer; (2) Disbursement Voucher No. 101-00-12-8580, for a total amount of ₱900,000.00 for the delivery of compost equipment, with Julia Enterprises indicated as the claimant; (3) Check No. 123787 dated December 12, 2000, with Julia Enterprises as the payee, for the amount of ₱861,600.00; and (4) Memorandum Receipt, allegedly signed by Punzalan and Caunan on December 13, 2000.[9]

Incidentally, Pacheco's purchase request was granted. In 2003, one set of compost equipment was delivered by another supplier, Lacto South Metro Enterprises (Lacto South) to Barangay Marcelo Green under P.O. No. 001100,[10] which was received by Pacheco.[11]

Meanwhile, the Office of the City Auditor continued with the investigation. In a Memorandum[12] dated November 5, 2002, State Auditor Arturo F. Garcia disclosed that 10 sets of compost equipment worth ₱4,493,750.00 were purchased and paid in full by the City Government in 2000 and 2001 for different barangays, but were not delivered by the suppliers. One of the barangays that did not receive such compost equipment is Barangay Marcelo Green.[13]

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[8] *Rollo*, p. 81.

[9] *Id.* at 83.

[10] Exhibit "T-1", folder of exhibits, p. 91.

[11] *Rollo*, pp. 132-133.

[12] Exhibit "N to N-4", folder of exhibits, pp. 40-44.

[13] Exhibit "N-2-a", *id.* at 42.

To clear her name,[14] Punzalan lodged a complaint before the Ombudsman. After preliminary investigation, an Information[15] was filed before the Sandiganbayan against the following: Silvestre De Leon (De Leon), City Treasurer; Antonio Abad III (Abad), City Administrator; Caunan, the Officer-in Charge of the General Services Offices; and Ricardo Adriano (Adriano), the proprietor of Julia Enterprises for violation of Section 3(e) of R.A. No. 3019. The Information reads:

That on or before 12 December 2000 or sometime prior or subsequent thereto, in the City of Parañaque, and within the jurisdiction of this Honorable Court, accused [De Leon], a public official being then the City Treasurer of Parañaque City, [Abad], likewise a public officer, being then the City Administrator, and [Caunan], a public official, being the OIC, General Services Offices, all from the [City Government], while in the performance of their duties and taking advantage of their official positions, conspiring and confederating with a private individual [Adriano], Proprietor of [Julia Enterprises], with evident bad faith or manifest partiality, did then and there willfully, unlawfully and criminally cause damage or undue injury to the government in the amount of Nine Hundred Thousand Pesos (₱900,000.00) by causing it to appear that a [compost equipment] was delivered by [Julia Enterprises] to a certain [Punzalan], then Barangay Chairman, Barangay Marcelo Green, Parañaque City, when in truth and in fact no such delivery was made, and thereafter, did then and there cause the payment thereof in the amount of Nine Hundred Thousand Pesos (₱900,000.00) to the damage and prejudice of the government.

CONTRARY TO LAW.[16]

On April 29, 2008, the Sandiganbayan rendered a Decision finding Caunan guilty of violating Section 3(e) of R.A. No. 3019 while her co-accused Abad was exonerated of the charge against him, *viz*:

ACCORDINGLY, accused [Caunan] is found guilty beyond reasonable doubt of having violated [R.A. No.] 3019, Section 3 (e)

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[14] TSN, February 6, 2006, p. 27.

[15] *Rollo*, pp. 97-99.

[16] *Id*. at 97-98.

and is sentenced to suffer in prison the penalty of 6 years [and] 1 month to 10 years. She also has to suffer perpetual disqualification from holding any public office. Accused [Caunan] is directed to reimburse the City of Parañaque the amount of eight hundred sixty[-]one thousand six hundred [pesos] (₱861,600.00) representing the cost of the undelivered compost equipment.

For failure of the prosecution to prove the guilt of accused [Abad], beyond reasonable doubt, he is ACQUITTED.

Costs against accused [Caunan].

SO ORDERED.[17]

Accused De Leon was freed from criminal liability in view of his death during the pendency of the case, whereas Adriano was at large.[18]

During trial, the defense primarily argued that an ocular inspection would prove that the compost equipment was actually delivered to Barangay Marcelo Green. Yet, the Sandiganbayan found that the existing compost equipment in Barangay Marcelo Green was not delivered by Julia Enterprises, but by Lacto South under another fully paid transaction.[19] The Sandiganbayan took note of the uncontested fact that the City Government entered into two separate transactions for the purchase of compost equipment for Barangay Marcelo Green. The first transaction was initiated by Punzalan's request on August 15, 2000 while the second transaction was a result of Pacheco's request on September 5, 2002. It is the non-delivery under the *first transaction* which is the subject of the case.[20]

Caunan moved to reconsider the decision but it was denied by the Sandiganbayan in its Resolution[21] dated July 11, 2008.

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[17] *Id*. at 95.

[18] *Id*. at 80. (Note: Adriano was eventually arrested and detained at the National Bureau of Investigation Security Management Division, Sandiganbayan *rollo*, Vol. II, p. 227; arraigned on July 10, 2008, Sandiganbayan *rollo*, Vol. II, p. 246.)

[19] *Rollo*, p. 90.

[20] *Id*. at 91.

[21] *Id*. at 101-106.

Thus, Caunan filed a petition for *certiorari*[22] assailing the decision and resolution of the Sandiganbayan.

The issue primarily raised in the petition is whether Caunan's conviction for the crime of violation of Section 3(e) of R.A. No. 3019 was proper.

Ruling of the Court

The petition has no merit.

At the outset, it is emphasized that a petition for review on *certiorari* under Rule 45 shall raise only questions of law. "It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; [and] (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record. None of the above exceptions obtains in this case."[23]

The charge against Caunan is violation of Section 3(e) of R.A. No. 3019, which provides:

Sec. 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest impartiality, evident bad faith or gross inexcusable negligence. x x x.

x x x x x x x x x

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[22] *Id*. at 17-76.

[23] *Ong v. People*, 616 Phil. 829, 834-835 (2009).

To be found guilty under the said provision, the following elements must concur:

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

3) That his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[24]

First, it is undisputed that Caunan is a public officer, as she is the Officer in Charge of the Department of General Services of the City Government.[25] Under the Local Government Code of 1991, the general services officer performs all functions pertaining to supply and property management in the local government unit concerned.[26] The duties and functions of a general services officer were further expounded by the Sandiganbayan:

The functions of accused Caunan as the General Services Officer of the City of Parañaque are:

1) As the General Services Officer of the City of Parañaque, she is mandated under the Local Government Code to "(t)ake custody of and be accountable for all properties, real or personal, owned by the local government unit".

2) As the General Services Officer, her purchasing function is specified under the Rules and Regulations On Supply and Property Management, Section 29 [of] which provides that:

> In every province and city, the office of the general services officer shall exercise the function of acquiring for the province or city all its supply or property requirements. The municipal treasurer and barangay treasurer shall exercise said function for the municipal and barangay government, respectively.

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[24] *Plameras v. People*, G.R. No. 187268, September 4, 2013, 705 SCRA 104, 123-124, citing *Uriarte v. People*, 540 Phil. 477, 493 (2006).

[25] *Rollo*, p. 98.

[26] Article 20, Section 490, paragraph b.3.8.

For the transaction/purchase in this case, it was accused Caunan as the General Services Officer who acted as the purchasing officer for the City of Parañaque.

3) On the point bearing on the delivery and inspection of purchased items, Section 114 of the Rules and Regulations on Supply and Property Management specifically provides that "(a)ll items to be inspected ***shall be accepted first by the general services officer***, municipal or barangay treasurer, as the case may be." x x x Thus, the equipment (supposedly delivered) to be inspected should have first been accepted by her, as the purchasing officer.[27] (Citations omitted and emphasis and italics in the original)

Second, on the element of bad faith and manifest partiality, Caunan made it appear that the compost equipment subject of P.O. No. 0005031 was in the official custody of the government by signing the disbursement voucher and issuing a memorandum receipt for compost equipment which was not in fact delivered.[28]

The Court explained that "'partiality' is synonymous with 'bias' which 'excites a disposition to see and report matters as they are wished for rather than as they are.' 'Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.'"[29]

Caunan's bad faith was made even more evident in the irregularities committed in the delivery and acceptance of the compost equipment. Caunan claimed that her office merely prepared the Memorandum Receipt based on the documents indicating that the compost equipment was received by Punzalan in Barangay Marcelo Green.[30] These documents were supposedly brought to her office by a courier from the

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[27] *Rollo*, p. 92.

[28] *Id*. at 93.

[29] *Sison v. People*, 628 Phil. 573, 583 (2010), citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687.

[30] TSN, March 2, 2007, p. 28.

barangay.[31] However, the details surrounding the delivery are not as straightforward; upon further questioning, Caunan revealed that the compost equipment was initially delivered in the premises of the city hall because of the lack of space to hold the equipment in Barangay Marcelo Green. It was the inspector from the Office of the City Treasurer who accepted and inspected the delivery in the city hall, after which Caunan issued the Memorandum Receipt.[32] According to Caunan, the compost equipment was deposited later on with the manufacturer because of the confined space in the city hall.[33]

In Caunan's version of the events, there was no account on how the delivery eventually reached Barangay Marcelo Green after the compost equipment was allegedly "returned" to the manufacturer. She claimed that she cannot remember when the compost equipment was actually delivered in Barangay Marcelo Green[34] but she sent members of her staff to check on the equipment.[35] Notably, none of these staff members were presented to testify for the defense; there was no record as regards these staff members who could vouch for the inspection of the delivery in Barangay Marcelo Green under P.O. No. 0005031. In fact, Caunan declared that she personally inspected the compost equipment in Barangay Marcelo Green only in 2006.[36] This was long after the supplier was paid in the year 2000.

On the last element, Caunan raised in her petition that P.O. No. 0005031 was duly served and that no damage or prejudice was caused to the government; that Pacheco certified that two sets of compost equipment are currently operating in Barangay Marcelo Green; and that the delivery was not made by Julia Enterprises itself as the supplier, but by Lacto South as the

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[31] *Id*. at 34.

[32] *Id*. at 49.

[33] *Id*. at 37.

[34] *Id*. at 56.

[35] *Id*. at 57.

[36] *Id*. at 55.

manufacturer of the equipment. These circumstances would indicate that there was full performance of the obligation to deliver under P.O. No. 0005031.[37]

But the delivery made by Lacto South is not an issue in this case as that delivery referred to a different transaction, duly paid and supported by another set of documents.[38] In his testimony, Pacheco clarified that his certification, affirming that two sets of compost equipment are operating in Barangay Marcelo Green, was issued sometime in 2004.[39] This was after the compost equipment under P.O. No. 001100 from Lacto South was delivered, while the second set of compost equipment was subsequently adopted from Barangay Baclaran.[40] This was also verified by a Technical Audit Specialist from the Commission on Audit in an Inspection Report[41] when another ocular inspection was conducted in 2006. It was found that "there was a delivery of two (2) sets of [compost equipment] but not under the subject [P.O.] No. 0005031 and not supplied by [Julia Enterprises]."[42]

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[37] *Rollo*, p. 59.

[38] Documents related to P.O. No. 001100:

1) P.O. No. 001100 dated October 10, 2002, with Lacto South as supplier, for a total of ₱900,000.00, Exhibit "T-1", folder of exhibits, p. 91.

2) Disbursement voucher with Lacto South as the named claimant, for a total amount of ₱864,000.00, Exhibit "T-2", folder of exhibits, p. 92.

3) Check No. 15521, dated March 18, 2003 for the amount of ₱864,000.00, issued to Lacto South, Exhibit "T-3", folder of exhibits, p. 93.

4) Official Receipt issued by Lacto South dated March 18, 2003 for the amount of ₱864,000.00 for one set of compost equipment, Exhibit "T-4", folder of exhibits, p. 94.

5) Inspection and Acceptance Report dated January 8, 2003, Exhibit T-5", folder of exhibits, p. 95.

6) Memorandum Receipt, dated January 8, 2003, signed by Pacheco and Caunan, Exhibit "T-6", folder of exhibits, p. 96.

[39] TSN, February 13, 2006, p. 28.

[40] *Id.*

[41] Exhibit "S", folder of exhibits, pp. 88-89.

[42] *Id.* at 88.

Furthermore, a perusal of the testimony[43] of Ronaldo Samala, managing partner of Lacto South, would show that he never claimed that Lacto South delivered any compost equipment under P.O. No. 0005031 on behalf of Julia Enterprises.

Thus, no delivery under P.O. No. 0005031 was made, resulting to a loss of ₱861,600.00 on the part of the government for which Caunan must be held liable. As the general services officer concerned, she participated in the issuance of documents which facilitated the payment of undelivered compost equipment.

WHEREFORE, the petition is **DENIED**. The Decision dated April 29, 2008 and Resolution dated July 11, 2008 of the Sandiganbayan in Criminal Case No. 28068 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Perlas-Bernabe,[*] and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186102. February 24, 2016]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **HEIRS OF TEODULO EBESA, namely: PORFERIA L. EBESA, EFREN EBESA, DANTE EBESA and CYNTHIA EBESA, and ATTY. FORTUNATO VELOSO,** *respondents.*

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[43] TSN, July 2, 2007, pp. 5-26.

[*] Additional Member per Raffle dated February 24, 2016 *vice* Associate Justice Diosdado M. Peralta.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ONE WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST STRICTLY COMPLY WITH THE REQUIREMENTS OF THE RULES; REQUIREMENTS IN ORDER TO PERFECT AN APPEAL, ENUMERATED.—** It has been repeatedly underscored in a long line of jurisprudence that the right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal. Basically, there are three requirements in order to perfect an appeal: (1) the filing of a notice of appeal; (2) the payment of docket and other legal fees; and (3) in some cases, the filing of a record on appeal, all of which must be done within the period allowed for filing an appeal. Failure to observe any of these requirements is fatal to one's appeal.

2. **ID.; ID.; APPEAL DOCKET FEES; THE PAYMENT OF DOCKET FEES IS MANDATORY AND JURISDICTIONAL; EXPLAINED.—** Verily, the payment of appeal docket fees is both mandatory and jurisdictional. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. The failure to pay or even the partial payment of the appeal fees does not toll the running of the prescriptive period, hence, will not prevent the judgment from becoming final and executory.

3. **ID.; ID.; FAILURE TO PERFECT AN APPEAL RAISES JURISDICTIONAL PROBLEM, AS IT DEPRIVES THE APPELLATE COURT OF ITS JURISDICTION OVER THE APPEAL.—** Finally, the pronouncement of the Court in *Gonzales, et al. v. Pe* finds relevance in the instant case, thus: While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the

prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.

APPEARANCES OF COUNSEL

Noel Z. De Leon for petitioner.
Nilo G. Ahat for respondent Veloso.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Resolution[2] dated January 14, 2009 of the Court of Appeals (CA) in CA-G.R. CEB CV No. 01380, which dismissed the appeal on the ground of non-payment of appeal fees.

The Facts of the Case

The National Transmission Corporation (NTC) is a government-owned and controlled corporation (GOCC) created and existing by virtue of Republic Act No. 9136, under which it is granted the authority to exercise the power of eminent domain.[3]

Early in 2005, NTC filed a case to expropriate the 1,479-square-meter portion of Lot No. 18470, covered by Original Certificate of Title No. 1852, which has a total area of 6,014 sq m and situated in Quiot, Pardo, Cebu City. It is declared under the co-ownership of the heirs of Teodulo Ebesa, namely, Porferia Ebesa, Efren Ebesa, Dante Ebesa and Cynthia Ebesa Ramirez (Heirs of Ebesa), but is occupied by Atty. Fortunato Veloso (Veloso) (respondents), who allegedly purchased the

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[1] *Rollo*, pp. 10-40.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Franchito N. Diamante and Edgardo L. Delos Reyes concurring; *id.* at 42-53.

[3] *Id.* at 55.

property, as evidenced by an unregistered Deed of Sale. NTC alleged that the acquisition of an easement right-of-way over a portion of the subject property is necessary for the construction and maintenance of the 138KV DC/ST Transmission Line (Tie Line) of the Quiot (Pardo) 100MVA Substation Project in Cebu City, an undertaking that partook of a public purpose.[4]

In his Answer, Veloso, acting as his own counsel in collaboration with Atty. Nilo Ahat, conceded that the project was indeed intended for a public purpose but disputed its necessity and urgency. He alleged that the project will not only affect a portion of the property but its entirety considering that the construction entails the installation of huge permanent steel towers and the air space directly above the subject property will be permanently occupied with transmission lines. Ultimately, the NTC wanted to acquire not only an easement of right-of-way but a site location for its permanent structures and improvements which seriously affects the marketability of the remainder of the property which was incidentally classified as residential in character.[5]

On April 22, 2005, NTC filed an Urgent Motion for the Issuance of a Writ of Possession alleging that it has deposited with the Land Bank of the Philippines the amount of ₱11,300.00, representing the assessed value of the subject property and that it has served Notice to Take Possession to interested parties.[6]

On July 15, 2005, the Regional Trial Court (RTC) of Cebu City, Branch 21, issued an order of expropriation, declaring that the NTC has a lawful right to take the subject property and use the same for the intended public purpose subject to the payment of just compensation which shall be based on its value at the time of the filing of the complaint.[7]

On July 20, 2005, the NTC filed a compliance informing the RTC that it already complied with the requirement for the payment

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[4] *Id.*

[5] *Id.* at 56.

[6] *Id.*

[7] *Id.* at 57.

of just compensation based on the Bureau of Internal Revenue zonal valuation and prayed for the immediate issuance of a writ of possession. Thereafter, on July 21, 2005, the RTC issued an order for the issuance of a writ of possession.[8]

On August 2, 2005, the RTC issued an order, directing the NTC and Veloso to submit within 10 days from receipt thereof the name of the individuals respectively nominated by them to be appointed as commissioners tasked to determine the amount of just compensation for the subject property. Thereafter, in an Order dated August 25, 2005, the RTC appointed Alfio Robles (Robles), Rodulfo Lafradez, Jr. (Lafradez Jr.) and Wilfredo Muntuerto (Muntuerto) as commissioners. The Board of Commissioners were directed to include in its report (1) the amount of fair market value of the property sought to be expropriated, (2) the existence and value of improvements, (3) the existence and value of consequential damages, if any, on the remainder of the property, and (4) the existence and value of consequential benefits, if any, to be derived by the owner of the subject property.[9]

On September 22, 2005, the Board of Commissioners submitted a Commissioner's Report with Dissenting Opinion. In the majority opinion penned by Muntuerto and Lafradez Jr., both believed that the applicable fair market value for the year 2005 is ₱6,222.42 per sq m and that the remainder of the property suffered consequential damage equivalent to 70% of its fair market value. On the other hand, Robles, in his dissent, opined that the applicable fair market value is ₱3,100.00 per sq m and that no consequential damage was suffered. Both the NTC and Veloso submitted their respective oppositions to the report.[10]

Ruling of the RTC

On January 9, 2006, the RTC rendered a Decision,[11] upholding the majority opinion in the report of the Board of Commissioners, the dispositive portion of which reads:

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[8] *Id.*

[9] *Id.* at 58.

[10] *Id.* at 59.

[11] Issued by Presiding Judge Eric F. Menchavez; *id.* at 55-68A.

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered:

Fixing the just compensation which [the NTC] must pay [Veloso] for the land with an area of 1,479 square meters described in the complaint in the reasonable amount of ₱35,179,984.88.

Directing [NTC] to pay [Veloso] interest at the legal rate on the amount of just compensation from the time writ of possession was issued and until the said amount shall have been paid in full. The amount initially paid by [NTC] to [Veloso] based upon the relevant BIR zonal valuation shall accordingly be deducted the same being part payment of the just compensation payable.

Directing the [NTC] to either immediately pay [Veloso] the amount of just compensation fixed herein plus the mandated interest plus the costs and retain the possession taken by it under Section 2, Rule 67 of the 1997 Rules of Civil Procedure of the land x x x subject of this case, or, immediately return to [Veloso] the possession of the land subject of this case and await finality of this judgment before paying the just compensation fixed herein, it being clear from Section 10, Rule 67 of the 1997 Rules of Civil Procedure that [the NTC's] right to retain the possession of the subject land which it took pursuant of Section 2, Rule 67 of the 1997 Rules of Civil Procedure, is predicated upon its payment of the just compensation fixed in this judgment.

Declaring the condemnation or expropriation of the subject land with an area of 1,479 square meters described in the complaint for the public use or stated in the complaint, that is, to enable the [NTC] to construct and maintain its 138KV DC/ST Transmission Li[n]e (Tie Line) of the Quiot (Pardo) 100MVA Substation Project, upon payment of the just compensation fixed above plus the applicable interest.

Declaring that [NTC] shall have the right to transfer the subject property in its name and own the same in perpetuity after it shall have paid in full the above amount of just compensation and the legal interest provided for.

SO ORDERED.[12]

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[12] *Id.* at 68-68A.

On January 24, 2006, the NTC filed a Motion for Reconsideration,[13] alleging that the foregoing decision was not supported by facts and existing laws. The RTC, however, denied the same in its Order dated February 14, 2006. Unyielding, the NTC appealed with the CA.[14]

On July 31, 2006, the CA directed the NTC to submit official receipt or proof of payment of the appeal fees within 10 days from notice.[15]

On August 18, 2006, the NTC filed a Manifestation, alleging that it cannot comply with the order of the CA as it did not pay appeal docket fees. It asseverated that the receiving clerk of the RTC did not accept its payment for the appeal fees on the ground that it is exempted from doing so, being a GOCC.[16]

On September 14, 2006, the respondents filed a Motion to Dismiss, arguing that the RTC's Decision dated January 9, 2006 has become final and executory since the payment of docket fees is mandatory and jurisdictional and non-payment thereof will not toll the running of the appeal period. The respondents further pointed out the NTC's failure to file the record on appeal which is required under Section 2, Rule 41 of the 1997 Rules of Civil Procedure.[17]

The NTC, on September 27, 2006, filed another Manifestation, informing the CA that it already filed on September 18, 2006 a Manifestation with Urgent Ex-Parte Motion with the RTC and settled the payment of appeal fees. The NTC also submitted the official receipts for the said payment.[18]

On March 27, 2007, the respondents filed a Motion for Leave to File Supplemental Motion to Dismiss, with the attached

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[13] *Id.* at 69-75.

[14] *Id.* at 76.

[15] *Id.* at 42.

[16] *Id.*

[17] *Id.* at 43.

[18] *Id.* at 43-44.

Supplemental Motion to Dismiss, seeking to notify the CA that the RTC denied the NTC's motion to accept its belated tender of appeal docket fees and its motion for reconsideration.[19]

In its Comment to the respondents' motion, the NTC claimed that it was in good faith and that the failure to pay the appeal docket fees was attributable to the receiving clerk of the RTC. It also alleged that it had already paid the appeal docket fees and the belated payment does not preclude the CA from taking cognizance of the appeal. Finally, it claimed that the notice of appeal was valid and that the record on appeal is not required.[20]

Ruling of the CA

On January 14, 2009, the CA issued the assailed Resolution, granting the respondents' motion to dismiss, the dispositive portion of which reads:

> **Accordingly,** the Motion to Dismiss and Supplemental Motion to Dismiss filed by [the respondents] are hereby GRANTED.
>
> **SO ORDERED.**[21]

The CA held that the NTC's counsel should know that as a GOCC, it is not exempted from the payment of docket and other legal fees. Such knowledge can be presumed from the fact that NTC was required initiatory filing fees when it filed the expropriation case and was even prepared to defray appeal fees. The CA found it preposterous for the NTC's counsel to blindly rely on the receiving clerk's advice knowing fully well the importance of paying the docket and other legal fees. The NTC's counsel was negligent and the reason for his omission can hardly be characterized as excusable.[22]

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[19] *Id.* at 44.

[20] *Id.* at 45.

[21] *Id.* at 53.

[22] *Id.* at 49-50.

The CA added that even granting that the NTC timely paid the appeal docket fees, its appeal would still not prosper for non-filing of a record on appeal.[23]

Unyielding, the NTC, in its present appeal, contends that the failure to pay appeal docket fees does not automatically cause the dismissal of the appeal, but lies on the discretion of the court. It asseverates that since its failure to pay the appeal fees was not willful and deliberate, its omission could be excused in the interest of justice and equity. It reiterates that it was prepared to pay the docket fees if not for the receiving clerk's advice that the same was not necessary as it is a GOCC. Even then, it eventually paid the appeal fees, although past the reglementary period.[24]

In the same manner, the NTC argues that it is erroneous for the CA to require the filing of a record on appeal and deem the case also dismissible on that ground. It asserts that Section 1, Rule 50 of the Rules of Court confers only a discretionary power, not a duty, upon the CA to dismiss the appeal based on the failure to file a record on appeal as can be deduced from the use of the word "may". The CA may thus exercise its discretion to dismiss the appeal or not, taking into consideration the reason behind the omission. And, in this case, the NTC believes that the record on appeal is no longer necessary since the first stage of expropriation had already been concluded and no appeal was taken on it. The order recognizing the power to expropriate had long become final and the only issue left is the amount of just compensation.[25]

Ruling of the Court

It has been repeatedly underscored in a long line of jurisprudence that the right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. Thus, one who seeks to avail of

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[23] *Id.* at 51.

[24] *Id.* at 20-22.

[25] *Id.* at 24-25.

the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.[26]

Basically, there are three requirements in order to perfect an appeal: (1) the filing of a notice of appeal; (2) the payment of docket and other legal fees; and (3) in some cases, the filing of a record on appeal, all of which must be done within the period allowed for filing an appeal. Failure to observe any of these requirements is fatal to one's appeal.

In the instant case, the NTC bewails the dismissal of its appeal for non-payment of appeal docket fees. Specifically, it claims that its failure to pay the appeal fees was due to the erroneous advice of the RTC's receiving clerk. It implores the liberality of the Court that its omission be deemed as an excusable neglect as it was ready and willing to pay the docket fees.

In *M.A. Santander Construction, Inc. v. Villanueva*,[27] the Court emphasized, thus:

> The mere filing of the Notice of Appeal is not enough, for it must be accompanied by the payment of the correct appellate docket fees. Payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. Failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional and failure to perfect an appeal renders the judgment final and executory.[28] (Citations omitted)

Verily, the payment of appeal docket fees is both mandatory and jurisdictional. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. The failure to pay or even the partial payment of the appeal fees does not toll the running of the

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[26] *Julian v. Development Bank of the Philippines, et al.*, 678 Phil. 133, 143 (2011).

[27] 484 Phil. 500 (2004).

[28] *Id.* at 505.

prescriptive period, hence, will not prevent the judgment from becoming final and executory. Such was the circumstance in the instant appeal. The NTC failed to pay the appeal fees without justifiable excuse. That its counsel or his representative was misled by the advice of the receiving clerk of the RTC is unacceptable as the exercise of ordinary diligence could have avoided such a blunder. It is apparent from the records that the NTC had ample time to rectify the error or clarify its reservation regarding the propriety of its supposed exemption from the appeal fees. It received a copy of the RTC Decision dated January 9, 2006 on January 10, 2006[29] and the Order denying its motion for reconsideration on February 17, 2006[30] and had until March 6, 2006 to file a notice of appeal and pay the corresponding docket fees.[31] NTC's counsel, through his representative, did file a notice of appeal as early as February 17, 2006 but did not pay the docket fees apparently because of the advice of the receiving clerk of the RTC, although he was ready and willing to pay the amount at that time. If the NTC came prepared to the trial court with the necessary voucher to settle the docket fees at the time of filing of the notice of appeal, it understood that it was not exempted from paying the said fees. This can be further deduced from the fact that the NTC was required to pay filing fees with the RTC at the commencement of the action.

Further, NTC's counsel should have been diligent enough to inquire whether the appeal had been properly filed and that the corresponding fees were accordingly paid knowing fully well the significance of these considerations. Had he only bothered to do so, he would have known about the non-payment of the filing fees and could have easily consulted with other lawyers to settle this uncertainty. The NTC, a GOCC, maintains a pool of learned lawyers, who must have had exposure with expropriation cases. He could have easily confirmed from them the necessity of paying the docket fees and settled it promptly

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[29] *Rollo*, p. 55.

[30] *Id.* at 76.

[31] *Id.* at 48.

especially since there are still a number of days left after the notice of appeal was filed.

The implication of the timely payment of docket fees cannot be overemphasized. "The payment of the full amount of the docket fee is a *sine qua non* requirement for the perfection of an appeal. The court acquires jurisdiction over the case only upon the payment of the prescribed docket fees."[32]

Indeed, there are instances when the Court relaxed the rule and allowed the appeal to run its full course. In *La Salette College v. Pilotin*,[33] the Court ruled:

> Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.
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> In *Mactan Cebu International Airport Authority v. Mangubat*, the payment of the docket fees was delayed by six (6) days, but the late payment was accepted, because the party showed willingness to abide by the Rules by immediately paying those fees. *Yambao v. Court of Appeals* saw us again relaxing the Rules when we declared therein that "the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for x x x the failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant."[34] (Citations omitted and italics in the original)

In the present case, the NTC failed to present any justifiable excuse for its failure to pay the docket fees like in the cases of

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[32] *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, 492 Phil. 698, 701 (2005).

[33] 463 Phil. 785 (2003).

[34] *Id.* at 794.

Mactan Cebu International Airport Authority v. Mangubat[35] and *Yambao v. CA*.[36] In *Mactan Cebu International Airport Authority*, the petitioner took the initiative to verify the necessity of paying the docket fees and paid it outright, albeit six days after the lapse of the period to appeal. Quite the opposite, the NTC in the present case never lifted a finger until it was required by the CA to present proof of its payment of the docket fees and paid the same only six months after the period to appeal has prescribed.

The NTC cannot also invoke the ruling of the Court in *Yambao* as it does not share the same factual milieu as in the instant case. In *Yambao*, the petitioner expressed willingness to pay by settling the docket fee of ₱820.00 within the period of appeal, however, deficient in the amount of ₱20.00 due to the erroneous assessment of the receiving clerk of the RTC. In the instant case, the NTC did not pay at all and solely attributed the blame on the supposed advice of the receiving clerk of the RTC about its exemption from the payment of docket fees notwithstanding circumstances that would have expectedly stirred second thoughts. Its unthinking reliance on the alleged advice of the receiving clerk is utterly irresponsible and inexcusable.

Apart from failure to pay the docket fees, the NTC likewise failed to file a record on appeal. Apparently, the NTC is of the impression that the record on appeal is only necessary when what is being appealed is the first phase of the action, that is, the order of condemnation or expropriation, but not when the appeal concerns the second phase of expropriation or the judgment on the payment of just compensation.[37]

In *Municipality of Biñan v. Judge Garcia*,[38] the Court elucidated, thus:

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[35] 371 Phil. 393 (1999).

[36] 399 Phil. 712 (2000).

[37] *Rollo*, pp. 24-25.

[38] 259 Phil. 1058 (1989).

There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." x x x.

The second phase of the eminent domain action is concerned with the determination by the Court of "the just compensation for the property sought to be taken." This is done by the Court with the assistance of not more than three (3) commissioners. x x x [39] (Citations omitted)

NTC asseverates that the rationale for requiring the record on appeal in cases where several judgments are rendered is to enable the appellate court to decide the appeal without the original record which should remain with the court *a quo* pending disposal of the case with respect to the other defendants or issues. This usually happens in expropriation cases, when an order of expropriation or condemnation is appealed, while the issue of just compensation is still being resolved with the trial court.[40] It is the contention of the NTC that considering that the first phase of the action had already been concluded and no appeal was taken, the record on appeal is no longer necessary. There is no longer any issue on the order of expropriation, the appeal having been made on the just compensation only.

The issue replicates that which had been resolved by the Court in *National Power Corporation v. Judge Paderanga*.[41] In the said case, the trial court upheld the propriety of the order of condemnation of the property and proceeded to deliberate on the just compensation due the defendants, notwithstanding the failure of one of the defendants to file answer. The petitioner,

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[39] *Id.* at 1068.

[40] *Rollo*, pp. 23-24.

[41] 502 Phil. 722 (2005).

however, appealed the amount of the just compensation awarded by the trial court but dispensed with the filing of a record on appeal. For this reason, the trial court dismissed the petitioner's appeal, holding that the latter did not perfect its appeal due to its failure to file the record on appeal. The CA affirmed the dismissal and this was upheld by this Court. The Court ruled:

> That the defendant Enriquez did not file an answer to the complaint did not foreclose the possibility of an appeal arising therefrom. For Section 3 of Rule 67 provides:
>
> Sec. 3. *Defenses and objections*. x x x.
>
> x x x x x x x x x
>
> A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, *at the trial of the issue of just compensation,* **whether or not a defendant has previously appeared or answered**, *he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.* x x x.
>
> In other words, once the compensation for Enriquez' property is placed in issue at the trial, she could, following the third paragraph of the immediately-quoted Section 3 of Rule 67, participate therein and if she is not in conformity with the trial courts determination of the compensation, she can appeal therefrom.
>
> Multiple or separate appeals being existent in the present expropriation case, NPC should have filed a record on appeal within 30 days from receipt of the trial court's decision. The trial court's dismissal of its appeal, which was affirmed by the appellate court, was thus in order.[42] (Emphasis, underscoring and italics in the original)

The same ratiocination holds with respect to the instant case. While Veloso's co-defendants, the Heirs of Ebesa, did not file any objection to the order of condemnation, they may at any time question the award of just compensation that may be awarded

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[42] *Id.* at 732-733.

by the trial court. While there was an allegation that the property had already been sold by the Heirs of Ebesa to Veloso, the extent of the said unregistered sale was not specified hence it is not unlikely that the former have remaining interest over the subject property. No proof was likewise presented that the property or portion thereof was already transferred under Veloso's sole ownership. As it is, the Heirs of Ebesa are still the declared owners of the property in the title, hence, the probability that they will file a separate appeal is not remote. It is for this reason that the record on appeal is being required under the Rules of Court and the NTC's insistence that it is unnecessary and dispensable lacked factual and legal basis.

Finally, the pronouncement of the Court in *Gonzales, et al. v. Pe*[43] finds relevance in the instant case, thus:

> While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[44] (Citation omitted)

WHEREFORE, in view of the foregoing disquisition, the Resolution dated January 14, 2009 of the Court of Appeals in CA-G.R. CEB CV No. 01380 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.*, concur.

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[43] 670 Phil. 597 (2011).

[44] *Id.* at 614.

THIRD DIVISION

[G.R. No. 187417. February 24, 2016]

CHRISTINE JOY CAPIN-CADIZ, *petitioner, vs.* **BRENT HOSPITAL AND COLLEGES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULES OF PROCEDURE ARE MERE TOOLS TO EXPEDITE THE DECISION OR RESOLUTION OF CASES AND IF THEIR STRICT AND RIGID APPLICATION WOULD FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE, THEN IT MUST BE AVOIDED; APPLICATION IN CASE AT BAR.—** Rule 46, Section 3 of the Rules of Court states the contents of a petition filed with the CA under Rule 65, *viz,* "the petition shall x x x indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received." The rationale for this is to enable the CA to determine whether the petition was filed within the period fixed in the rules..Cadiz's failure to state the date of receipt of the copy of the NLRC decision, however, is not fatal to her case since the more important material date which must be duly alleged in a petition is the date of receipt of the resolution of denial of the motion for reconsideration, which she has duly complied with. The CA also dismissed the petition for failure to attach the registry receipt in the affidavit of service. Cadiz points out, on the other hand, that the registry receipt number was indicated in the petition and this constitutes substantial compliance with the requirement. What the rule requires, however, is that the registry receipt must be appended to the paper being served. Clearly, mere indication of the registry receipt numbers will not suffice. In fact, the absence of the registry receipts amounts to lack of proof of service. Nevertheless, despite this defect, the Court finds that the ends of substantial justice would be better served by relaxing the application of technical rules of procedure. With regard to counsel's failure to indicate the place where the IBP and PTR receipts were

issued, there was substantial compliance with the requirement since it was indicated in the verification and certification of non-forum shopping, as correctly argued by Cadiz's lawyer. Time and again, the Court has emphasized that rules of procedure are designed to secure substantial justice. These are mere tools to expedite the decision or resolution of cases and if their strict and rigid application would frustrate rather than promote substantial justice, then it must be avoided.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; IMMORALITY, AS A GROUND FOR DISCIPLINE AND DISCHARGE; JURISPRUDENCE HAS ALREADY SET THE STANDARD OF MORALITY WITH WHICH AN ACT SHOULD BE GAUGED – IT IS PUBLIC AND SECULAR, NOT RELIGIOUS; SUSTAINED IN CASE AT BAR.—** Jurisprudence has already set the standard of morality with which an act should be gauged — it is public and secular, not religious. Whether a conduct is considered disgraceful or immoral should be made in accordance with the prevailing norms of conduct, which, as stated in *Leus,* refer to those conducts which are proscribed because they are **detrimental to conditions upon which depend the existence and progress of human society.** The fact that a particular act does not conform to the traditional moral views of a certain sectarian institution is not sufficient reason to qualify such act as immoral unless it, likewise, does not conform to public and secular standards. More importantly, there must be substantial evidence to establish that premarital sexual relations and pregnancy out of wedlock is considered disgraceful or immoral. As declared in *Leus,* "there is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons; that neither does such situation contravene[s] any fundamental state policy enshrined in the Constitution." The fact that Brent is a sectarian institution does not automatically subject Cadiz to its religious standard of morality absent an express statement in its manual of personnel policy and regulations, prescribing such religious standard as gauge as these regulations create the obligation on both the employee and the employer to abide by the same. Brent, likewise, cannot resort to the Manual of Regulations for Private School (MRPS) because the Court already stressed in *Leus* that "premarital sexual relations between two consenting

adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS."

3. **ID.; ID.; ID.; DOCTRINE OF MANAGEMENT PREROGATIVE; DEFINED; NOT ESTABLISHED IN CASE AT BAR.—** The doctrine of management prerogative gives an employer the right to "regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees." In this case, Brent imposed on Cadiz the condition that she subsequently contract marriage with her then boyfriend for her to be reinstated. According to Brent, his is "in consonance with the policy against encouraging illicit or common-law relations that would subvert the sacrament of marriage." Statutory law is replete with legislation protecting labor and promoting equal opportunity in employment. No less than the 1987 Constitution mandates that the "State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." x x x With particular regard to women, Republic Act No. 9710 or the *Magna Carta of Women* protects women against discrimination in all matters relating to marriage and family relations, including the **right to choose freely a spouse and to enter into marriage only with their free and full consent.** Weighed against these safeguards, it becomes apparent that Brent's condition is coercive, oppressive and discriminatory. There is no rhyme or reason for it. It forces Cadiz to marry for economic reasons and deprives her of the freedom to choose her status, which is a privilege that inheres in her as an intangible and inalienable right. While a marriage or no-marriage qualification may be justified as a "bona fide occupational qualification," Brent must prove two factors necessitating its imposition, *viz:* (1) that the employment qualification is **reasonably related to the essential operation of the job involved;** and (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job. Brent has not shown the presence of neither of

these factors. Perforce, the Court cannot uphold the validity of said condition.

4. **ID.; ID.; ID.; ILLEGAL DISMISSAL; PERIOD FOR COMPUTING SEPARATION PAY AND BACKWAGES, EXPLAINED.—** Where reinstatement is no longer viable as an option, separation pay should be awarded as an alternative and as a form of financial assistance. In the computation of separation pay, **the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible.** x x x Generally, the computation of backwages is reckoned from the date of illegal dismissal until actual reinstatement. In case separation pay is ordered in lieu of reinstatement or reinstatement is waived by the employee, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay. Jurisprudence further clarified that the period for computing the backwages during the period of appeal should end on the date that a higher court reversed the labor arbitration ruling of illegal dismissal.

5. **ID.; ID.; ID.; ID.; A FINDING OF ILLEGAL DISMISSAL, BY ITSELF, DOES NOT ESTABLISH BAD FAITH TO ENTITLE AN EMPLOYEE TO MORAL DAMAGES; CASE AT BAR.—** A finding of illegal dismissal, by itself, does not establish bad faith to entitle an employee to moral damages. Absent clear and convincing evidence showing that Cadiz's dismissal from Brent's employ had been carried out in an arbitrary, capricious and malicious manner, moral and exemplary damages cannot be awarded. The Court nevertheless grants the award of attorney's fees in the amount of ten percent (10%) of the total monetary award, Cadiz having been forced to litigate in order to seek redress of her grievances.

JARDELEZA, *J., concurring*:

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; IN THE APPLICATION OF LAWS AND GOVERNMENT REGULATIONS, THEIR PROVISIONS SHOULD NOT BE INTERPRETED IN A MANNER THAT WILL VIOLATE THE FUNDAMENTAL LAW OF THE LAND.—** The Constitution protects personal autonomy as part of the Due

Process Clause in the Bill of Rights. Indeed, the Bill of Rights cannot be invoked against private employers. However, the values expressed in the Constitution cannot be completely ignored in the just adjudication of labor cases. The MRPS is a department order issued by the Department of Education (DepEd) in the exercise of its power to regulate private schools. It is thus a government issuance which the DepEd is authorized to issue in accordance with law. Further, the labor tribunals also invoke the Labor Code which provides for the just causes for termination. The Labor Code is a presidential decree and has the status of law. The Constitution is deemed written into every law and government issuance. Hence, in the application of laws and governmental regulations, their provisions should not be interpreted in a manner that will violate the fundamental law of the land. Further, the relationship between labor and management is a matter imbued with public interest. The Constitution accords protection to labor through various provisions identifying the rights of laborers. This Court has also persistently emphasized the constitutional protection accorded to labor. x x x I propose that in ascertaining whether the public holds a particular conduct as moral, the Constitution is a necessary and inevitable guide. The Constitution is an expression of the ideals of the society that enacted and ratified it. Its bill of rights, in particular, is an embodiment of the most important values of the people enacting a Constitution. Values that find expression in a society's Constitution are not only accepted as moral, they are also fundamental. x x x [T]he MRPS and the Labor Code cannot be used to justify Brent's acts. These government issuances respect the Constitution and abide by it. Any contrary interpretation cannot be countenanced.

2. **POLITICAL LAW; BILL OF RIGHTS; JURISPRUDENCE DIRECTS US TO THE CONCLUSION THAT THE CONSTITUTIONAL RIGHT TO LIBERTY DOES NOT MERELY REFER TO FREEDOM FROM PHYSICAL RESTRAINT; APPLICATION IN CASE AT BAR.—** Section 1 of Article III of the Bill of Rights provides that no person shall be deprived of liberty without due process of law. The concept of the constitutional right to liberty accepts of no precise definition and finds no specific boundaries. Indeed, there is no one phrase or combination of words that can capture what it means to be free. This Court, nevertheless, as early as the case of *Rubi v. Provincial Board of Mindoro,* explained

that liberty is not merely freedom from imprisonment or restraint. x x x Jurisprudence directs us to the conclusion that the constitutional right to liberty does not merely refer to freedom from physical restraint. It also includes the right to be free to choose to be, in the words of Justice Fernando, a "unique individual." This necessarily includes the freedom to choose how a person defines her personhood and how she decides to live her life. Liberty, as a constitutional right, involves not just freedom from unjustified imprisonment. It also pertains to the freedom to make choices that are intimately related to a person's own definition of her humanity. The constitutional protection extended to this right mandates that beyond a certain point, personal choices must not be interfered with or unduly burdened as such interference with or burdening of the right to choose is a breach of the right to be free. I propose that our reading of the constitutional right to personal liberty and privacy should approximate how personal liberty as a concept has developed in the US as adopted in our jurisprudence. At the heart of this case are two rights that are essential to the concept of personal liberty and privacy, if they are to be given any meaning at all. Brent's act of dismissing Christine Joy because of her pregnancy out of wedlock, with the condition that she will be reinstated if she marries her then boyfriend, unduly burdens first, her right to choose whether to marry, and second, her right to decide whether she will bear and rear her child without marriage. These are personal decisions that go into the core of how Christine Joy chooses to live her life. This Court cannot countenance any undue burden that prejudices her right to be free.

3. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE PROVISIONS OF THE LAW PROHIBITS THE DISMISSAL OF A WOMAN BY REASON OF HER MARRIAGE; VIOLATION IN CASE AT BAR.—** The Labor Code contains provisions pertaining to stipulations against marriage. Specifically, Article 134 states that it is unlawful for employers to require as a condition for employment or continuation of employment that a woman employee shall not get married. This provision also prohibits the dismissal of a woman employee by reason of her marriage. This Court, in the case of *Philippine Telegraph and Telephone Company v. NLRC,* has applied this provision and found illegal the dismissal of a woman employee because of a condition in her contract that she remains single during her employment. Christine Joy's

case involves the reverse, albeit the effect is as burdensome and as odious. x x x Brent, in conditioning Christine Joy's reinstatement on her marriage, has effectively burdened her freedom. She was forced to choose to lose her job or marry in order to keep it. By invoking the MRPS and the Labor Code, Brent is, in effect, saying that this kind of compelled choice is sanctioned by the State. Contrary to this position, the State cannot countenance placing a woman employee in a situation where she will have to give up one right (the right to marry as a component of personal liberty and privacy) for another (the right to employment). This is not the kind of State that we are in. Nor is it the kind of values that our Constitution stands for. The Labor Code prohibits the discriminatory act of discharging a woman on account of her pregnancy. Brent, in constructively dismissing Christine Joy because of her pregnancy, violated this prohibition. Brent, however, attempts to evade this prohibition by claiming that it was not the mere fact of Christine Joy's pregnancy that caused her dismissal. Rather, according to Brent, it is her pregnancy outside of wedlock that justified her termination as immorality is a just cause under the MRPS and the Labor Code. In doing so, Brent not only violated the law, it even went further and asked the labor tribunals and the judiciary to lend an interpretation to the Labor Code and the MRPS that disregards the Constitution.

APPEARANCES OF COUNSEL

Enriquez Capin & Gaugano Law Offices for petitioner.

Go Covarrubias Acosta Cubero & Associates Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolutions dated July 22, 2008[2]

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[1] *Rollo*, pp. 14-49.

[2] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez concurring; *id.* at 64-64A.

and February 24, 2009[3] of the Court of Appeals (CA) in CA-G.R. SP No. 02373-MIN, which dismissed the petition filed by petitioner Christine Joy Capin-Cadiz (Cadiz) on the following grounds: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's Professional Tax Receipt (PTR) and Integrated Bar of the Philippines (IBP) official receipts.

Antecedent Facts

Cadiz was the Human Resource Officer of respondent Brent Hospital and Colleges, Inc. (Brent) at the time of her indefinite suspension from employment in 2006. The cause of suspension was Cadiz's Unprofessionalism and Unethical Behavior Resulting to Unwed Pregnancy. It appears that Cadiz became pregnant out of wedlock, and Brent imposed the suspension until such time that she marries her boyfriend in accordance with law.

Cadiz then filed with the Labor Arbiter (LA) a complaint for Unfair Labor Practice, Constructive Dismissal, Non-Payment of Wages and Damages with prayer for Reinstatement.[4]

Ruling of the Labor Tribunals

In its Decision[5] dated April 12, 2007, the LA found that Cadiz's indefinite suspension amounted to a constructive dismissal; nevertheless, the LA ruled that Cadiz was not illegally dismissed as there was just cause for her dismissal, that is, she engaged in premarital sexual relations with her boyfriend resulting in a pregnancy out of wedlock.[6] The LA further stated that her "immoral conduct . . . [was] magnified as serious misconduct not only by her getting pregnant as a result thereof before and without marriage, but more than that, also by the fact that Brent is an institution of the Episcopal Church in the Philippines

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[3] *Id.* at 65-67.

[4] *Id.* at 50.

[5] Rendered by Executive Labor Arbiter Rhett Julius J. Plagata; *id.* at 52-58.

[6] *Id.* at 55-56.

operating both a hospital and college where [Cadiz] was employed."[7] The LA also ruled that she was not entitled to reinstatement "at least until she marries her boyfriend," to backwages and vacation/sick leave pay. Brent, however, manifested that it was willing to pay her 13th month pay. The dispositive portion of the decision reads:

> **WHEREFORE**, judgment is hereby rendered, ordering [Brent] to pay [Cadiz] 13th month pay in the sum of Seven Thousand Nine Hundred Seventy & 11/100 Pesos (₱7,970.11).
>
> All other charges and claims are hereby dismissed for lack of merit.
>
> **SO ORDERED.**[8]

Cadiz appealed to the National Labor Relations Commission (NLRC), which affirmed the LA decision in its Resolution[9] dated December 10, 2007. Her motion for reconsideration having been denied by the NLRC in its Resolution[10] dated February 29, 2008, Cadiz elevated her case to the CA on petition for *certiorari* under Rule 65.

Ruling of the CA

The CA, however, dismissed her petition outright due to technical defects in the petition: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's PTR and IBP official receipts.[11] Cadiz sought reconsideration of the assailed CA Resolution dated July 22, 2008 but it was denied in the assailed Resolution dated February 24, 2009.[12] The CA further ruled that "a perusal of the petition will reveal that public

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[7] *Id.* at 56.

[8] *Id.* at 57-58.

[9] *Id.* at 59-61.

[10] *Id.* at 62-63.

[11] *Id.* at 64-64A.

[12] *Id.* at 65-67.

respondent NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction x x x holding [Cadiz's] dismissal from employment valid."[13]

Hence, the present petition.

Cadiz argues that —

I

THE HONORABLE [NLRC] GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT [CADIZ'S] IMPREGNATION OUTSIDE OF WEDLOCK IS A GROUND FOR THE TERMINATION OF [CADIZ'S] EMPLOYMENT[14]

II

THE [NLRC] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISMISSAL OF [CADIZ] ON THE GROUND THAT THE INDEFINITE SUSPENSION WAS VALID AND REQUIRED [CADIZ] TO FIRST ENTER INTO MARRIAGE BEFORE SHE CAN BE ADMITTED BACK TO HER EMPLOYMENT[15]

III

RESPONDENT [NLRC] GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED [CADIZ'S] CLAIM FOR BACKWAGES, ALLOWANCES, SICK LEAVE PAY, MATERNITY PAY AND MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES[16]

IV

THE [CA] MISPLACED APPLICATION OF THE MATERIAL DATA RULE RESULTING TO GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE APPEAL[17]

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[13] *Id.* at 67.

[14] *Id.* at 21-22.

[15] *Id.* at 28.

[16] *Id.* at 36.

[17] *Id.* at 38.

Cadiz contends, among others, that getting pregnant outside of wedlock is not grossly immoral, especially when both partners do not have any legal impediment to marry. Cadiz surmises that the reason for her suspension was not because of her relationship with her then boyfriend but because of the resulting pregnancy. Cadiz also lambasts Brent's condition for her reinstatement — that she gets married to her boyfriend — saying that this violates the stipulation against marriage under Article 136 of the Labor Code. Finally, Cadiz contends that there was substantial compliance with the rules of procedure, and the CA should not have dismissed the petition.[18]

Brent, meanwhile, adopts and reiterates its position before the LA and the NLRC that Cadiz's arguments are irrational and out of context. Brent argues, among others, that for Cadiz to limit acts of immorality only to extra-marital affairs is to "change the norms, beliefs, teachings and practices of BRENT as a Church institution of the x x x Episcopal Church in the Philippines."[19]

Ruling of the Court

Ordinarily, the Court will simply gloss over the arguments raised by Cadiz, given that the main matter dealt with by the CA were the infirmities found in the petition and which caused the dismissal of her case before it. In view, however, of the significance of the issues involved in Cadiz's dismissal from employment, the Court will resolve the petition including the substantial grounds raised herein.

The issue to be resolved is whether the CA committed a reversible error in ruling that: (1) Cadiz's petition is dismissible on ground of technical deficiencies; and (2) the NLRC did not commit grave abuse of discretion in upholding her dismissal from employment.

Rules of procedure are mere tools designed to facilitate the attainment of justice

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[18] *Id.* at 21-44.

[19] *Id.* at 86-87.

In dismissing outright Cadiz's petition, the CA found the following defects: (1) incomplete statement of material dates; (2) failure to attach registry receipts; and (3) failure to indicate the place of issue of counsel's PTR and IBP official receipts.

Rule 46, Section 3 of the Rules of Court states the contents of a petition filed with the CA under Rule 65, *viz*., "the petition shall x x x indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received." The rationale for this is to enable the CA to determine whether the petition was filed within the period fixed in the rules.[20] Cadiz's failure to state the date of receipt of the copy of the NLRC decision, however, is not fatal to her case since the more important material date which must be duly alleged in a petition is the date of receipt of the resolution of denial of the motion for reconsideration,[21] which she has duly complied with.[22]

The CA also dismissed the petition for failure to attach the registry receipt in the affidavit of service.[23] Cadiz points out, on the other hand, that the registry receipt number was indicated in the petition and this constitutes substantial compliance with the requirement. What the rule requires, however, is that the registry receipt must be appended to the paper being served.[24]

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[20] *Sara Lee Philippines, Inc. v. Macatlang*, G.R. No. 180147, June 4, 2014, 724 SCRA 552, 573-574.

[21] *Id.*; *Barra v. Civil Service Commission,* 706 Phil. 523, 526 (2013).

[22] See CA *rollo*, p. 4.

[23] Section 13, Rule 13 of the Rules of Court provides, in part:

If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[24] *Fortune Life Insurance Company, Inc. v. Commission on Audit (COA) Proper; COA Regional Office No. VI-Western Visayas; Audit Group LGS-B, Province of Antique; and Provincial Government of Antique,* G.R. No. 213525, January 27, 2015.

Clearly, mere indication of the registry receipt numbers will not suffice. In fact, the absence of the registry receipts amounts to lack of proof of service.[25] Nevertheless, despite this defect, the Court finds that the ends of substantial justice would be better served by relaxing the application of technical rules of procedure.[26] With regard to counsel's failure to indicate the place where the IBP and PTR receipts were issued, there was substantial compliance with the requirement since it was indicated in the verification and certification of non-forum shopping, as correctly argued by Cadiz's lawyer.[27]

Time and again, the Court has emphasized that rules of procedure are designed to secure substantial justice. These are mere tools to expedite the decision or resolution of cases and if their strict and rigid application would frustrate rather than promote substantial justice, then it must be avoided.[28]

Immorality as a just cause for termination of employment

Both the LA and the NLRC upheld Cadiz's dismissal as one attended with just cause. The LA, while ruling that Cadiz's indefinite suspension was tantamount to a constructive dismissal, nevertheless found that there was just cause for her dismissal. According to the LA, "there was just cause therefor, consisting in her engaging in premarital sexual relations with Carl Cadiz, allegedly her boyfriend, resulting in her becoming pregnant out of wedlock."[29] The LA deemed said act to be immoral, which was punishable by dismissal under Brent's rules and which likewise constituted serious misconduct under Article 282 (a) of the Labor Code. The LA also opined that since Cadiz was Brent's Human Resource Officer in charge of implementing its

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[25] *The Government of the Philippines v. Aballe*, 520 Phil. 181, 190 (2006).

[26] *Panaga v. CA*, 534 Phil. 809, 816 (2006).

[27] See CA *rollo*, p. 28.

[28] *Barroga v. Data Center College of the Philippines, et al.*, 667 Phil. 808, 818 (2011).

[29] *Rollo*, p. 56.

rules against immoral conduct, she should have been the "epitome of proper conduct."[30] The LA ruled:

> [Cadiz's] immoral conduct by having premarital sexual relations with her alleged boy friend, a former Brent worker and her co-employee, is magnified as serious misconduct not only by her getting pregnant as a result thereof before and without marriage, but more than that, also by the fact that Brent is an institution of the Episcopal Church in the Philippines x x x committed to "developing competent and dedicated professionals x x x and in providing excellent medical and other health services to the community for the Glory of God and Service to Humanity." x x x As if these were not enough, [Cadiz] was Brent's Human Resource Officer charged with, among others, implementing the rules of Brent against immoral conduct, including premarital sexual relations, or fornication x x x. She should have been the epitome of proper conduct, but miserably failed. She herself engaged in premarital sexual relations, which surely scandalized the Brent community x x x.[31]

The NLRC, for its part, sustained the LA's conclusion.

The Court, however, cannot subscribe to the labor tribunals' conclusions.

Admittedly, one of the grounds for disciplinary action under Brent's policies is immorality, which is punishable by dismissal at first offense.[32] Brent's Policy Manual provides:

> CATEGORY IV
>
> In accordance with <u>Republic Act No. 1052</u>,[33] the following are just cause for terminating an employment of an employee without a definite period:

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[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN A COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL, ESTABLISHMENT OR ENTERPRISE (approved on June 12, 1954), which has been repealed by Presidential Decree No. 442 or the Labor Code of the Philippines (effective November 1, 1974).

x x x x x x x x x

2. Serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work, such as, but not limited to the following:

x x x x x x x x x

b. Commission of immoral conduct or indecency within the company premises, such as an act of lasciviousness or any act which is sinful and vulgar in nature.

c. Immorality, concubinage, bigamy.[34]

Its Employee's Manual of Policies, meanwhile, enumerates "[a]cts of immorality such as scandalous behaviour, acts of lasciviousness against any person (patient, visitors, co-workers) within hospital premises"[35] as a ground for discipline and discharge. Brent also relied on Section 94 of the Manual of Regulations for Private Schools (MRPS), which lists "disgraceful or immoral conduct" as a cause for terminating employment.[36]

Thus, the question that must be resolved is whether Cadiz's premarital relations with her boyfriend and the resulting pregnancy out of wedlock constitute immorality. To resolve this, the Court makes reference to the recently promulgated case of *Cheryll Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*.[37]

Leus involved the same personal circumstances as the case at bench, albeit the employer was a Catholic and sectarian educational institution and the petitioner, Cheryll Santos Leus (Leus), worked as an assistant to the school's Director of the Lay Apostolate and Community Outreach Directorate. Leus was

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See *National Labor Union v. Secretary of Labor*, G.R. No. L-41459, December 18, 1987, 156 SCRA 592.

[34] NLRC records, Vol. 1, pp. 77-78.

[35] *Id.* at 81.

[36] *Id.* at 54.

[37] G.R. No. 187226, January 28, 2015.

dismissed from employment by the school for having borne a child out of wedlock. The Court ruled in *Leus* that the determination of whether a conduct is disgraceful or immoral involves a two-step process: ***first***, a consideration of the totality of the circumstances surrounding the conduct; and ***second***, an assessment of the said circumstances *vis-à-vis* the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable.

In this case, the surrounding facts leading to Cadiz's dismissal are straightforward — she was employed as a human resources officer in an educational and medical institution of the Episcopal Church of the Philippines; she and her boyfriend at that time were both single; they engaged in premarital sexual relations, which resulted into pregnancy. The labor tribunals characterized these as constituting disgraceful or immoral conduct. They also sweepingly concluded that as Human Resource Officer, Cadiz should have been the epitome of proper conduct and her indiscretion "surely scandalized the Brent community."[38]

The foregoing circumstances, however, do not readily equate to disgraceful and immoral conduct. Brent's Policy Manual and Employee's Manual of Policies do not define what constitutes immorality; it simply stated *immorality* as a ground for disciplinary action. Instead, Brent erroneously relied on the standard dictionary definition of fornication as a form of illicit relation and proceeded to conclude that Cadiz's acts fell under such classification, thus constituting immorality.[39]

Jurisprudence has already set the standard of morality with which an act should be gauged — it is public and secular, not religious.[40] Whether a conduct is considered disgraceful or immoral should be made in accordance with the prevailing norms of conduct, which, as stated in *Leus*, refer to those conducts which are proscribed because they are **detrimental to conditions**

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[38] *Rollo*, p. 56.

[39] NLRC records, Vol. I, pp. 53-54.

[40] *Supra* note 37.

upon which depend the existence and progress of human society. The fact that a particular act does not conform to the traditional moral views of a certain sectarian institution is not sufficient reason to qualify such act as immoral unless it, likewise, does not conform to public and secular standards. More importantly, there must be **substantial evidence** to establish that premarital sexual relations and pregnancy out of wedlock is considered disgraceful or immoral.[41]

The totality of the circumstances of this case does not justify the conclusion that Cadiz committed acts of immorality. Similar to *Leus*, Cadiz and her boyfriend were both single and had no legal impediment to marry at the time she committed the alleged immoral conduct. In fact, they eventually married on April 15, 2008.[42] Aside from these, the labor tribunals' respective conclusion that Cadiz's "indiscretion" "scandalized the Brent community" is speculative, at most, and there is no proof adduced by Brent to support such sweeping conclusion. Even Brent admitted that it came to know of Cadiz's "situation" only when her pregnancy became manifest.[43] Brent also conceded that "[a]t the time [Cadiz] and Carl R. Cadiz were just carrying on their boyfriend-girlfriend relationship, there was no knowledge or evidence by [Brent] that they were engaged also in premarital sex."[44] This only goes to show that Cadiz did not flaunt her premarital relations with her boyfriend and it was not carried on under scandalous or disgraceful circumstances. As declared in *Leus*, "there is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons; that neither does such situation contravene[s] any fundamental state policy enshrined in the Constitution."[45] The fact that Brent is a sectarian institution does not automatically subject Cadiz to its religious

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[41] *Id.*

[42] *Rollo*, p. 22.

[43] *Id.* at 88.

[44] NLRC records, Vol. 2, p. 64.

[45] *Supra* note 37.

standard of morality absent an express statement in its manual of personnel policy and regulations, prescribing such religious standard as gauge as these regulations create the obligation on both the employee and the employer to abide by the same.[46]

Brent, likewise, cannot resort to the MRPS because the Court already stressed in *Leus* that "premarital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS."[47]

Marriage as a condition for reinstatement

The doctrine of management prerogative gives an employer the right to "regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees."[48] In this case, Brent imposed on Cadiz the condition that she subsequently contract marriage with her then boyfriend for her to be reinstated. According to Brent, this is "in consonance with the policy against encouraging illicit or common-law relations that would subvert the sacrament of marriage."[49]

Statutory law is replete with legislation protecting labor and promoting equal opportunity in employment. No less than the 1987 Constitution mandates that the "State shall afford full protection to labor, local and overseas, organized and unorganized,

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[46] See *Abbott Laboratories, Philippines v. Alcaraz,* G.R. No. 192571, July 23, 2013, 701 SCRA 682.

[47] *Supra* note 37.

[48] *Peckson v. Robinsons Supermarket Corporation,* G.R. No. 198534, July 3, 2013, 700 SCRA 668, 678-679, citing *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 624 (2007).

[49] NLRC records, Vol. 1, p. 57.

and promote full employment and equality of employment opportunities for all."[50] The Labor Code of the Philippines, meanwhile, provides:

> Art. 136. Stipulation against marriage. It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

With particular regard to women, Republic Act No. 9710 or the *Magna Carta of Women*[51] protects women against discrimination in all matters relating to marriage and family relations, including the **right to choose freely a spouse and to enter into marriage only with their free and full consent**.[52]

Weighed against these safeguards, it becomes apparent that Brent's condition is coercive, oppressive and discriminatory. There is no rhyme or reason for it. It forces Cadiz to marry for economic reasons and deprives her of the freedom to choose her status, which is a privilege that inheres in her as an intangible and inalienable right.[53] While a marriage or no-marriage qualification may be justified as a "bona fide occupational qualification," Brent must prove two factors necessitating its imposition, *viz.*: (1) that the employment qualification is **reasonably related to the essential operation of the job involved**; and (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job.[54] Brent has not shown the presence of neither of these factors. Perforce, the Court cannot uphold the validity of said condition.

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[50] Article XIII, Section 3.

[51] Approved on August 14, 2009.

[52] Section 19 (b).

[53] See *Philippine Telegraph and Telephone Company v. NLRC*, 338 Phil. 1093 (1997).

[54] *Star Paper Corporation v. Simbol*, 521 Phil. 364, 375 (2006).

Given the foregoing, Cadiz, therefore, is entitled to reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay should be awarded as an alternative and as a form of financial assistance.[55] In the computation of separation pay, **the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible**.[56] In this case, the records do not show whether Cadiz already severed her employment with Brent or whether she is gainfully employed elsewhere; thus, the computation of separation pay shall be pegged based on the findings that she was employed on August 16, 2002, on her own admission in her complaint that she was dismissed on November 17, 2006, and that she was earning a salary of ₱9,108.70 per month,[57] which shall then be computed at a rate of one (1) month salary for every year of service,[58] as follows:

Monthly salary	₱9,108.70
multiplied by number of years	x
in service (Aug. 02 to Nov. 06)	4
	₱36,434.80

The Court also finds that Cadiz is only entitled to limited backwages. Generally, the computation of backwages is reckoned from the date of illegal dismissal until actual reinstatement.[59] In case separation pay is ordered in lieu of reinstatement or reinstatement is waived by the employee, backwages is computed from the time of dismissal until the finality of the decision ordering

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[55] *Bani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13, 2013, 709 SCRA 330, 349-350.

[56] *Bordomeo, et al. v. CA, et al.,* 704 Phil. 278, 300 (2013).

[57] *Rollo*, p. 50.

[58] *Supra* note 56.

[59] LABOR CODE OF THE PHILIPPINES, Article 279.

separation pay.[60] Jurisprudence further clarified that the period for computing the backwages during the period of appeal should end on the date that a higher court reversed the labor arbitration ruling of illegal dismissal.[61] If applied in Cadiz's case, then the computation of backwages should be from November 17, 2006, which was the time of her illegal dismissal, until the date of promulgation of this decision. Nevertheless, the Court has also recognized that the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[62] The Court notes that at the time of Cadiz's indefinite suspension from employment, *Leus* was yet to be decided by the Court. Moreover, Brent was acting in good faith and on its honest belief that Cadiz's pregnancy out of wedlock constituted immorality. Thus, fairness and equity dictate that the award of backwages shall only be equivalent to one (1) year or ₱109,304.40, computed as follows:

Monthly salary	₱9,108.70
multiplied by one year	x
or 12 months	12
	₱109,304.40

Finally, with regard to Cadiz's prayer for moral and exemplary damages, the Court finds the same without merit. A finding of illegal dismissal, by itself, does not establish bad faith to entitle an employee to moral damages.[63] Absent clear and convincing evidence showing that Cadiz's dismissal from Brent's employ had been carried out in an arbitrary, capricious and malicious manner, moral and exemplary damages cannot be awarded. The Court nevertheless grants the award of attorney's fees in the

[60] *Bani Rural Bank, Inc. v. De Guzman, supra* note 55.

[61] *Wenphil Corporation v. Abing,* G.R. No. 207983, April 7, 2014, 721 SCRA 126, 143.

[62] *Victory Liner, Inc. v. Race,* G.R. No. 164820, December 8, 2008, 573 SCRA 212, 221.

[63] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*, 639 Phil. 1, 15-16 (2010).

amount of ten percent (10%) of the total monetary award, Cadiz having been forced to litigate in order to seek redress of her grievances.[64]

WHEREFORE, the petition is **GRANTED**. The Resolutions dated July 22, 2008 and February 24, 2009 of the Court of Appeals in CA-G.R. SP No. 02373-MIN are **REVERSED** and **SET ASIDE**, and a **NEW ONE ENTERED** finding petitioner Christine Joy Capin-Cadiz to have been dismissed without just cause.

Respondent Brent Hospital and Colleges, Inc. is hereby **ORDERED TO PAY** petitioner Christine Joy Capin-Cadiz:

(1) One Hundred Nine Thousand Three Hundred Four Pesos and 40/100 (₱109,304.40) as backwages;
(2) Thirty-Six Thousand Four Hundred Thirty-Four Pesos and 80/100 (₱36,434.80) as separation pay; and
(3) Attorney's fees equivalent to ten percent (10%) of the total award.

The monetary awards granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.*, concur.

CONCURRING OPINION

JARDELEZA, *J.*:

Liberty is a right enshrined in the Constitution. However, as a testament to the impossibility of determining what it truly means to be free, neither the Constitution nor our jurisprudence has attempted to define its metes and bounds. This case challenges this Court to ascertain the extent of the protection of the right

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[64] *Pasos v. Philippine National Construction Corporation*, G.R. No. 192394, July 3, 2013, 700 SCRA 608, 631.

to liberty. This Court is called to answer the question of how free a woman is in this country to design the course of her own life. The Constitution must be read to grant her this freedom.

Petitioner Christine Joy Capin-Cadiz (Christine Joy) worked as the Human Resources Officer of respondent Brent Hospital and Colleges, Inc. ("Brent"). In the course of her employment, she met and fell in love with another Brent employee. Both Christine Joy and her boyfriend were single and with no legal impediment to marry. While in the relationship but before their marriage, Christine Joy became pregnant with her boyfriend's child. This prompted Brent to issue an indefinite suspension against her. Brent cited as a ground her unprofessionalism and unethical behavior resulting to unwed pregnancy. Brent also told Christine Joy that she will be reinstated on the condition that she gets married to her boyfriend who was, at that time, no longer a Brent employee. Christine Joy eventually married her boyfriend. This notwithstanding, Christine Joy felt that Brent's condition that she get married first before it reinstates her is unacceptable and an affront to the provision of the Labor Code concerning stipulations against marriage.

Claiming that this indefinite suspension amounted to constructive dismissal, Christine Joy filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC). The Labor Arbiter (LA) found that while the indefinite suspension was indeed a constructive dismissal, there was just cause for Brent to terminate Christine Joy's employment. According to the LA, this just cause was that Christine Joy engaged in premarital sexual relations with her boyfriend resulting in pregnancy out of wedlock. The LA also ruled that she was not entitled to reinstatement until she marries her boyfriend. Christine Joy appealed the LA decision before the NLRC. The NLRC affirmed the LA. Christine Joy then filed a special civil action for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals. However, the CA dismissed her petition on procedural grounds.

Brent and the labor tribunals argue that there was just cause for Christine Joy's dismissal because Brent's Policy Manual

identifies acts of immorality as a ground for disciplinary action. Brent also invokes Section 94 of the Manual of Regulations for Private Schools (MRPS) which lists disgraceful or immoral conduct as a ground for terminating an employee.

I agree with my esteemed colleague Justice Bienvenido L. Reyes' application of the doctrine in *Leus v. St. Scholastica's College Westgrove*.[1] I take this opportunity to contribute to the analysis for cases similar to this and *Leus* where women's fundamental rights are pitted against an employer's management prerogatives. While the *ponencia* views the issue from the perspective of public and secular morality, there is also a constitutional dimension to this case that should be considered. This is a woman's right to personal autonomy as a fundamental right.

The Constitution protects personal autonomy as part of the Due Process Clause in the Bill of Rights. Indeed, the Bill of Rights cannot be invoked against private employers.[2] However, the values expressed in the Constitution cannot be completely ignored in the just adjudication of labor cases.

In this case, Brent's reliance on laws and governmental issuances justifies the view that the Constitution should permeate a proper adjudication of the issue. Brent invokes the MRPS to support Christine Joy's dismissal. The MRPS is a department order issued by the Department of Education (DepEd) in the exercise of its power to regulate private schools. It is thus a government issuance which the DepEd is authorized to issue in accordance with law. Further, the labor tribunals also invoke the Labor Code which provides for the just causes for termination. The Labor Code is a presidential decree and has the status of law. The Constitution is deemed written into every law and government issuance. Hence, in the application of laws and governmental regulations, their provisions should not be interpreted in a manner that will violate the fundamental law of the land.

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[1] G.R. No. 187226, January 28, 2015, 748 SCRA 378.

[2] *Serrano v. NLRC*, G.R. No. 117040, January 27, 2000, 323 SCRA 445.

Further, the relationship between labor and management is a matter imbued with public interest. The Constitution accords protection to labor through various provisions identifying the rights of laborers. This Court has also persistently emphasized the constitutional protection accorded to labor. In *Philippine Telegraph and Telephone Company v. NLRC*,[3] this Court held that the constitutional guarantee of protection to labor and security of tenure are "paramount in the due process scheme."[4] Thus, in that case, this Court found that the employer's dismissal of a female employee because of her marriage runs afoul of the right against discrimination afforded to women workers by no less than the Constitution.[5]

Finally, *Leus* and the *ponencia* explain that in determining whether a particular conduct may be considered as immoral in the public and secular sense, courts must follow a two-step process. First, courts must consider the totality of the circumstances surrounding the conduct and second, courts must assess these circumstances *vis-à-vis* the prevailing norms of conduct or what society generally considers as moral. I propose that in ascertaining whether the public holds a particular conduct as moral, the Constitution is a necessary and inevitable guide. The Constitution is an expression of the ideals of the society that enacted and ratified it. Its bill of rights, in particular, is an embodiment of the most important values of the people enacting a Constitution. Values that find expression in a society's Constitution are not only accepted as moral, they are also fundamental. Thus, I propose that in ascertaining whether an act is moral or immoral, a due consideration of constitutional values must be made. In Christine Joy's case, her decision to continue her pregnancy outside of wedlock is a constitutionally protected right. It is therefore not only moral, it is also a constitutional value that this Court is duty bound to uphold.

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[3] G.R. No. 118978, May 23, 1997, 272 SCRA 596.

[4] *Id.* at 604.

[5] *Id.* at 605.

It is within this framework of analysis that I view the issue in this case.

Due Process and the Constitutional Right to Personal Liberty and Privacy

Section 1 of Article III of the Bill of Rights provides that no person shall be deprived of liberty without due process of law. The concept of the constitutional right to liberty accepts of no precise definition and finds no specific boundaries. Indeed, there is no one phrase or combination of words that can capture what it means to be free. This Court, nevertheless, as early as the case of *Rubi v. Provincial Board of Mindoro*,[6] explained that liberty is not merely freedom from imprisonment or restraint. This Court, speaking through Justice George Malcolm, said —

> Civil liberty may be said to mean that measure of freedom which may be enjoyed *in a civilized community*, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.
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> In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.[7]

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[6] 39 Phil. 660 (1919).

[7] *Id.* at 705; citations omitted, emphasis in the original.

In *Morfe v. Mutuc*,[8] this Court held that the constitutional right to liberty includes the concept of privacy. Quoting US Supreme Court Justice Louis Brandeis, this Court explained that the right to be let alone is "the most comprehensive of rights and the right most valued by civilized men."[9] Justice Enrique Fernando, in his *ponencia*, even went a step further and adopted the ruling in the US Supreme Court case *Griswold v. Connecticut*.[10] He said that the right to privacy is "accorded recognition independently of its identification with liberty."[11] He also added that "[t]he concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect."[12]

Ople v. Torres[13] reveals how this Court has come to recognize privacy as a component of liberty under the Due Process Clause and as a constitutional right arising from zones created by several other provisions of the Constitution. Chief Justice Reynato S. Puno, for this Court, explained that privacy finds express recognition in Section 3 of Article III of the Constitution which speaks of the privacy of communication and correspondence. He further stated that there are other facets of privacy protected under various provisions of the Constitution such as the Due Process Clause, the right against unreasonable searches and seizures, the liberty of abode and of changing the same, the right of association and the right against self-incrimination.

Jurisprudence directs us to the conclusion that the constitutional right to liberty does not merely refer to freedom from physical restraint. It also includes the right to be free to choose to be, in the words of Justice Fernando, a "unique individual."[14] This

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[8] G.R. No. L-20387, January 31, 1968, 22 SCRA 424.

[9] *Id.* at 442.

[10] 381 U.S. 479 (1965).

[11] *Morfe v. Mutuc, supra* at 444.

[12] *Id.* at 442.

[13] G.R. No. 127685, July 23, 1998, 293 SCRA 141.

[14] *Morfe v. Mutuc, supra.*

necessarily includes the freedom to choose how a person defines her personhood and how she decides to live her life. Liberty, as a constitutional right, involves not just freedom from unjustified imprisonment. It also pertains to the freedom to make choices that are intimately related to a person's own definition of her humanity. The constitutional protection extended to this right mandates that beyond a certain point, personal choices must not be interfered with or unduly burdened as such interference with or burdening of the right to choose is a breach of the right to be free.

In the United States, whose Constitution has heavily influenced ours, jurisprudence on the meaning of personal liberty is much more detailed and expansive. Their protection of the constitutional right to privacy has covered marital privacy, the right of a woman to choose to terminate her pregnancy and sexual conduct between unmarried persons.

In *Griswold v. Connecticut*,[15] the US Supreme Court held that privacy is a right protected under the US Constitution. Griswold explained that the US Constitution's Bill of Rights creates zones of privacy which prevents interference save for a limited exception. Thus, Griswold invalidated a statute which criminalizes the sale of contraceptives to married persons, holding that marital privacy falls within the penumbra of the right to privacy under the US Constitution's Bill of Rights.

Eisenstadt v. Baird[16] extended this right to privacy to unmarried persons. In this case, the US Supreme Court also held invalid a law prohibiting the distribution of contraceptives to unmarried persons. *Einstadt* explained that "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[17]

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[15] *Supra* note 10.

[16] 405 U.S. 438 (1972).

[17] *Id.* at 454; citations omitted.

In the celebrated case *Roe v. Wade*,[18] the US Supreme Court again explored the concept of the constitutional right to privacy. In this case, the US Supreme Court affirmed that while the US Constitution does not expressly mention a right to privacy, its provisions create such zones of privacy which warrant constitutional protection. *Roe* added to the growing jurisprudence on the right to privacy by stating that prior US Supreme Court cases reveal that "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and [child rearing] and education."[19] In *Roe*, the US Supreme Court held that the constitutional right to privacy also encompasses a woman's choice whether to terminate her pregnancy.

Planned Parenthood of Southeastern Pa. v. Casey,[20] which affirmed the essential ruling in *Roe*, added to this discussion on the right to privacy. The US Supreme Court repeated that the constitutional right to privacy means a protection from interference so that people, married or single, may be free to make the most intimate and personal choices of a lifetime. These choices, which are central to personal dignity and autonomy, are also central to the protection given under the Fourteenth Amendment of the US Constitution, the American Constitutional law equivalent of our Due Process Clause. Affirming that a woman has the right to choose to terminate her pregnancy as a component of her right to privacy, *Planned Parenthood* stated that "[t]he destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."[21]

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[18] 410 U.S. 113 (1973).

[19] *Id.* at 153-154; citations omitted.

[20] 505 U.S. 833 (1992).

[21] *Id.* at 853.

The US Supreme Court also ruled that the right to privacy includes sexual conduct between consenting adults. Thus, in *Lawrence v. Texas*,[22] the US Supreme Court invalidated a law criminalizing sodomy. *Lawrence* held that "[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government."[23]

The right to privacy as a component of personal liberty in the Due Process Clause also includes the freedom to choose whom to marry. This was the import of the US Supreme Court's ruling in *Loving v. Virginia*[24] which invalidated a law prohibiting interracial marriages. This was also one of the essential rulings in *Obergefell v. Hodges*[25] which held same-sex marriage as constitutional.

I propose that our reading of the constitutional right to personal liberty and privacy should approximate how personal liberty as a concept has developed in the US as adopted in our jurisprudence.

At the heart of this case are two rights that are essential to the concept of personal liberty and privacy, if they are to be given any meaning at all. Brent's act of dismissing Christine Joy because of her pregnancy out of wedlock, with the condition that she will be reinstated if she marries her then boyfriend, unduly burdens first, her right to choose whether to marry, and second, her right to decide whether she will bear and rear her child without marriage. These are personal decisions that go into the core of how Christine Joy chooses to live her life. This Court cannot countenance any undue burden that prejudices her right to be free.

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[22] 539 U.S. 558 (2003).

[23] *Id.* at 579.

[24] 388 U.S. 1 (1967).

[25] 576 U.S. ___ (2015).

The Right to Choose Marriage

The Labor Code contains provisions pertaining to stipulations against marriage. Specifically, Article 134 states that it is unlawful for employers to require as a condition for employment or continuation of employment that a woman employee shall not get married. This provision also prohibits the dismissal of a woman employee by reason of her marriage. This Court, in the case of *Philippine Telegraph and Telephone Company v. NLRC*,[26] has applied this provision and found illegal the dismissal of a woman employee because of a condition in her contract that she remains single during her employment. Christine Joy's case involves the reverse, albeit the effect is as burdensome and as odious.

In constructively dismissing Christine Joy and promising her reinstatement provided she marries her boyfriend, Brent has breached not a mere statutory prohibition but a constitutional right. While as I have already explained, there is jurisprudence to the effect that the Bill of Rights cannot be invoked against a private employer, Brent's act of invoking the MRPS and the Labor Code brings this case within the ambit of the Constitution. In arguing that immorality is a just cause for dismissal under the MRPS and the Labor Code, Brent is effectively saying that these government issuances violate the constitutional right to personal liberty and privacy. This interpretation cannot be countenanced. The Constitution is deemed written into these government issuances and as such, they must be construed to recognize the protection vested by the Bill of Rights.

As I have already discussed, the rights to personal liberty and privacy are embodied in the Due Process Clause and expounded by jurisprudence. These rights pertain to the freedom to make personal choices that define a human being's life and personhood. The decision to marry and to whom are two of the most important choices that a woman can make in her life. In the words of the US Supreme Court in *Obergefell* "[n]o union is more profound than marriage, for it embodies the highest

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[26] *Supra* note 3.

ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were."[27] The State has no business interfering with this choice. Neither can it sanction any undue burden of the right to make these choices. Brent, in conditioning Christine Joy's reinstatement on her marriage, has effectively burdened her freedom. She was forced to choose to lose her job or marry in order to keep it. By invoking the MRPS and the Labor Code, Brent is, in effect, saying that this kind of compelled choice is sanctioned by the State. Contrary to this position, the State cannot countenance placing a woman employee in a situation where she will have to give up one right (the right to marry as a component of personal liberty and privacy) for another (the right to employment). This is not the kind of State that we are in. Nor is it the kind of values that our Constitution stands for.

The Right to Bear and Rear a Child outside of Marriage

The Labor Code prohibits the discriminatory act of discharging a woman on account of her pregnancy.[28] Brent, in constructively dismissing Christine Joy because of her pregnancy, violated this prohibition. Brent, however, attempts to evade this prohibition by claiming that it was not the mere fact of Christine Joy's pregnancy that caused her dismissal. Rather, according to Brent, it is her pregnancy outside of wedlock that justified her termination as immorality is a just cause under the MRPS and the Labor Code. In doing so, Brent not only violated the law, it even went further and asked the labor tribunals and the judiciary to lend an interpretation to the Labor Code and the MRPS that disregards the Constitution.

Christine Joy has the right to decide how she will rear her child. If this choice involves being a single mother for now or for good, no law or government issuance may be used to interfere with this decision. Christine Joy, and all other women similarly

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[27] 576 U.S. ____ (2015).

[28] LABOR CODE, Art. 135.

situated, should find refuge in the protection extended by the Constitution.

The Constitution highlights the value of the family as the foundation of the nation.[29] Complementary to this, the Family Code of the Philippines provides that marriage is the foundation of the family.[30] Indeed, our laws and tradition recognize that children are usually reared and families built within the confines of marriage. The Constitution and the laws, however, merely express an ideal. While marriage is the ideal starting point of a family, there is no constitutional or statutory provision limiting the definition of a family or preventing any attempt to deviate from our traditional template of what a family should be.

In other jurisdictions, there is a growing clamor for laws to be readjusted to suit the needs of a rising class of women — single mothers by choice.[31] These countries are faced with the same predicament that Brent confronted in this case — their rules have lagged behind the demands of the times. Nevertheless, in our jurisdiction, the Constitution remains as the guide to ascertain how new situations are to be dealt with. In Christine Joy's case, the Constitution tells us that her right to personal liberty and privacy protects her choice as to whether she will raise her child in a marriage. Brent, in dismissing Christine Joy because of her pregnancy outside of wedlock, unduly burdened her right to choose. Again, the MRPS and the Labor Code cannot be used to justify Brent's acts. These government issuances respect the Constitution and abide by it. Any contrary interpretation cannot be countenanced.

In my proposed reading of the constitutional right to personal liberty and privacy, Christine Joy and other women similarly situated are free to be single mothers by choice. This cannot be curtailed in the workplace through discriminatory policies against

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[29] CONSTITUTION, Art. XV, Sec. 1.

[30] FAMILY CODE, Art. 1.

[31] See Fiona Kelly, *Autonomous Motherhood and the Law: Exploring the Narratives of Canada's Single Mothers By Choice*, 28 Can. J. Fam. L 63 (2013).

pregnancy out of wedlock. The Constitution allows women in this country to design the course of their own lives. They are free to chart their own destinies.

Constitution and Public Secular Morality

I finally propose that in applying the two-tier test in *Leus* and in the *ponencia*, the Constitution should be considered as a gauge of what the public deems as moral. In this case, there is a constitutionally declared value to protecting the right to choose to marry and the right to be a single mother by choice. This is our people's determination of what is moral. Thus, in the incisive analysis of Justice Reyes, whenever this right to choose is involved, the Constitution compels us to find that the act is constitutionally protected, and as such, is necessarily moral in the public and secular sense.

ACCORDINGLY, I vote to **grant** the Petition.

FIRST DIVISION

[G.R. No. 193176. February 24, 2016]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, RENATO D. TAYAG, ISMAEL M. REINOSO, GENEROSO TANSECO, MANUEL MORALES, RUBEN B. ANCHETA, GERONIMO Z. VELASCO, TROADIO T. QUIAZON, JR., FERNANDO MARAMAG, EDGARDO TORDESILLAS, ARTURO R. TANCO, JR., GERARDO SICAT, PANFILO O. DOMINGO, POTENCIANO ILUSORIO, MANUEL B. SYQUIO, RAFAEL M. ATAYDE, HONORIO POBLADOR, JR., GEORGE T.**

SCHOLEY,[1] **TIRSO ANTIPORDA, JR., CARLOS L. INDUCTIVO, and TEODORO VALENCIA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; JUDICIAL INTERVENTION PROPER IN CASE OF GRAVE ABUSE OF DISCRETION.—** [T]he Court does not ordinarily interfere with the Ombudsman's determination as to the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

2. **ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SECTION 3 (e) ON INJURY CAUSED BY GIVING UNWARRANTED BENEFITS, ADVANTAGES OR PREFERENCES TO PRIVATE PARTIES WHO CONSPIRE WITH PUBLIC OFFICERS; ELEMENTS.—** Violation of Section 3 (e) of RA 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. Its elements are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

3. **ID.; ID.; SECTION 3 (g) ON ENGAGEMENT IN A TRANSACTION OR CONTRACT THAT IS GROSSLY**

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[1] "Sholey" in some parts of the records.

AND MANIFESTLY DISADVANTAGEOUS TO THE GOVERNMENT; ELEMENTS.— Section 3 (g) of RA 3019 does not require the giving of unwarranted benefits, advantages or preferences to private parties who conspire with public officers, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government. The elements of the offense are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

4. **ID.; OFFICE OF THE OMBUDSMAN; THE DUTY OF THE OMBUDSMAN IN THE CONDUCT OF A PRELIMINARY INVESTIGATION IS TO ESTABLISH THE EXISTENCE OF PROBABLE CAUSE TO FILE AN INFORMATION IN COURT AGAINST THE ACCUSED.—** It bears stressing that the duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file an information in court against the accused. A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime. x x x [P]reliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Reyes Francisco Tecson & Associates Law Office for respondent Tirso Antiporda, Jr.

Bausa Ampil Suarez Paredes & Bausa for heirs of Panfilo Domingo.

Corporate Counsels, Phils. Law Office for respondent Rafael M. Atayde.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[2] are the Resolution[3] dated July 28, 2006 and Order[4] dated June 9, 2010 rendered by the Office of the Ombudsman (Ombudsman) in OMB-C-C-05-0110-C, which dismissed the complaint for violation of Sections 3 (e)[5] and (g)[6] of Republic Act No. (RA) 3019, also known as the "Anti-Graft and Corrupt Practices Act," for failure to establish probable cause against respondents.

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[2] *Rollo,* pp. 10-52.

[3] *Id*. at 56-102. Issued by Graft Investigation & Prosecution Officer I Richard E. Buban, reviewed by Director Aleu A. Amante, recommended for approval by Assistant Ombudsman Pelagio S. Apostol, and approved by Acting Ombudsman Orlando C. Casimiro.

[4] *Id*. at 103-107. Issued by Graft Investigation & Prosecution Officer I Richard E. Buban, reviewed by Director Aleu A. Amante, recommended for approval by Acting Assistant Ombudsman Mary Susan S. Guillermo, and approved by Ombudsman Ma. Merceditas N. Gutierrez.

[5] ***Section 3. Corrupt practices of public officers***. – x x x:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

[6] ***Section 3. Corrupt practices of public officers***.– x x x:

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

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The Facts

On October 8, 1992, former President Fidel V. Ramos issued Administrative Order No. 13[7] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) which was tasked to investigate alleged behest loans granted by the Philippine National Bank (PNB), among others, during the Marcos years.[8] The Committee was composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, the Solicitor General as Vice Chairman, and representatives from the Office of the Executive Secretary, Department of Finance, Department of Justice (DOJ), the Development Bank of the Philippines (DBP), PNB, the Asset Privatization Trust (APT), Philippine Export and Foreign Loan Guarantee Corporation, and the Government Corporate Counsel, as members.[9]

Subsequently, through the issuance of Memorandum Order No. 61,[10] the Committee's functions were broadened in scope. To aid in its investigation of behest loans, the following criteria were established as a frame of reference:

a. It is undercollateralized.
b. The borrower corporation is undercapitalized.
c. Direct or indirect endorsement by high government officials like presence of marginal notes.
d. Stockholders, officers or agents of the borrower corporation are identified as cronies.
e. Deviation of use of loan proceeds from the purpose intended.

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[7] *Rollo,* pp. 126-127. Entitled "CREATING A PRESIDENTIAL *AD-HOC* FACT-FINDING COMMITTEE ON BEHEST LOANS."

[8] See *id*. at 58.

[9] See *id*. at 126-127.

[10] *Id*. at 128-129. Entitled "BROADENING THE SCOPE OF THE *AD-HOC* FACT FINDING COMMITTEE ON BEHEST LOANS CREATED PURSUANT TO ADMINISTRATIVE ORDER No. 13, DATED 8 OCTOBER 1992" (November 9, 1992).

f. Use of corporate layering.
g. Non-feasibility of the project for which financing is being sought.
h. Extra-ordinary speed in which the loan release was made.[11]

Assisted by a Technical Working Group (TWG),[12] the Committee investigated the loans granted by PNB to Hercules Minerals and Oils, Inc. (HMOI), a domestic corporation engaged in mining copper ores to produce copper concentrates. It was incorporated on May 9, 1969 with an initial authorized capital stock of ₱20,000,000.00, of which ₱4,000,000.00 was subscribed and ₱l,000,000.00 was paid-up. On November 17, 1978, it increased its authorized capital stock to ₱50,000,000.00, and then to ₱200,000,000.00 on May 15, 1981.[13]

The Committee's investigation revealed that on June 27, 1978, the HMOI, through its Chairman of the Board, respondent Potenciano Ilusorio (Ilusorio), filed with the PNB an application for a guarantee loan in the amount of US$17,000,000.00 (US$17M), which the latter approved *via* PNB Resolution No. 548 dated July 16, 1979 where it stated that the proceeds of the loan will finance HMOI in developing, extracting, and milling its copper reserves in Ilocos Norte, dubbed as *"The Bully Bueno Copper Project. "*Thus, HMO1 and PNB executed a Loan Agreement on February 1, 1980 for the US$17M loan, then equivalent to ₱125,290,000.00.[14]

The US$17M loan was purportedly secured by several collaterals amounting to ₱138,783,000.00, which exceeded the

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[11] *Id.*

[12] Composed of officers and employees of government financing institutions such as the Development Bank of the Philippines (DBP), PNB, National Investment Development Corporation (NIDC), the Philippine Export and Loan Guarantee Corporation (PHILGUARANTEE), as well as the National Bureau of Investigation (NBI), the Commission on Audit (COA), the Asset Privatization Trust (APT; now Privatization Management Office), and the PCGG. (See *id.* at 18.)

[13] *Id.* at 60.

[14] See *id.* at 60-62.

maximum amount of loan in proportion to the value of the mortgaged assets fixed by Section 78 of RA 337,[15] otherwise known as the "General Banking Act,"[16] which provides:

> SEC. 78, Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security, plus seventy percent' (70%) of the appraised value of insured improvements, and such loans shall not be made unless title to the real estate, free from all encumbrances, shall be in the mortgagor. x x x.
>
> Similarly, loans on the security of chattels shall not exceed fifty percent (50%) of the appraised value of the security, and such loans shall not be made unless title to the chattels, free from all encumbrances, shall be in the mortgagor.
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> x x x x x x x x x

However, the collaterals were apparently over-valued, as the true amount thereof, *i.e.,* ₱94,656,000.00, was discovered when HMOI subsequently applied for additional loans, which PNB likewise approved.[17] Moreover, the assets used as collateral were inexistent, as these were yet "to be acquired," "to be constructed," and "to be produced," in violation of the said Section 78 of RA 337.[18]

Thereafter, PNB extended additional loans to HMOI, amounting to US$2,500,000.00 and ₱11,325,000.00. However, the Central Bank reduced the US$2,500,000.00 loan to US$1,970,000.00. At this time, the Total PNB Exposure was already ₱149,000,000.00 but the total value of the collateral was only ₱94,656,000.00. Moreover, the additional loans were secured by the same collaterals used in the initial US$17M loan,

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[15] Entitled "AN ACT REGULATING BANKS AND BANKING INSTITUTIONS AND FOR OTHER PURPOSES" (approved on July 24, 1948).

[16] RA 337 was erroneously mentioned as RA "773" in the Ombudsman Resolution. See *id.* at 62-63.

[17] See *id.* at 63-64.

[18] See *id.* at 68.

whose value was now ascertained to be only ₱94,656,000.00 instead of ₱138,783,000.00. Apparently, the value of the collaterals was exaggerated when HMOI applied for the US$17M loan.[19]

Subsequently, in a letter[20] dated March 10, 1981 respondent Rafael M. Atayde (Atayde), in his capacity as President of Hercules' Solid State Systems (HSSS), a new division of HMOI, wrote to then President Ferdinand Marcos (President Marcos) to seek the latter's intervention in the approval of HMOI's additional US$5,000,000.00 loan with PNB. President Marcos then endorsed[21] the letter to then PNB President, respondent Panfilo Domingo (Domingo), by personally noting thereon, "*Let us help Ilocos Norte by setting up this factory.*" As a result of the President's endorsement, HMOI was able to obtain an additional unsecured loan of ₱4,400,000.00. Likewise, PNB granted a ₱20,000,000.00 Export Advance against the US$3,800,000.00 letter of credit that was opened in favor of HMOI by Dai- ichi Kangyo Finance (HK) Ltd. Subsequently, PNB approved the refinancing of interest on HMOI loans in the aggregate amount of US$4,200,284.41 and the conversion of the ₱20,000,000.00 Export Advance to an Export Advance Line against existing collaterals. At this time, the Total PNB Exposure was ₱167,770,000.00 but the total value of collaterals was only ₱119,193,000.00.[22]

Sometime in 1982, HMOI ceased operations. Consequently, it was unable to meet its overdue and maturing obligations with PNB. Nonetheless, despite stoppage of its operations, PNB granted another loan to HMOI amounting to ₱650,000.00. By this time, the Total PNB Exposure had already ballooned to ₱203,610,000.00, while its collateral was only ₱94,656,000.00.[23]

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[19] See *id.* at 69-70.

[20] *Id.* at 285-286.

[21] See Memorandum 16-81 dated March 12,1981; *id.* at 287-288.

[22] See *id.* at 70-73 and 117-118.

[23] See *id.* at 73-74.

Upon PNB's foreclosure of HMOI's chattel and real estate mortgages, a deficiency claim amounting to ₱252,388,000.00 was left, as a substantial portion of the loans obtained by HMOI from PNB was utilized in assets with no collateral value.[24]

With the foregoing findings, petitioner PCGG, through its Legal Consultant, Atty. Liezel G. Chico (Atty. Chico), filed on December 15, 2004 an affidavit-complaint[25] before the Ombudsman accusing respondents of violating Sections 3 (e) and (g) of RA 3019 for their participation in the alleged behest loans extended by PNB to HMOI.[26] At the time of the application and approval of said loans, respondents Domingo, Renato D. Tayag (Tayag), Ismael M. Reinoso (Reinoso), Generoso Tanseco (Tanseco), Manuel Morales (Morales), Ruben B. Ancheta (Ancheta), Geronimo Z. Velasco (Velasco), Troadio T. Quiazon, Jr. (Quiazon), Fernando Maramag (Maramag), Edgardo Tordesillas (Tordesillas), Arturo R. Tanco, Jr. (Tanco), and Gerardo Sicat (Sicat)[27] were members of the PNB Board of Directors, while respondents Ilusorio, Atayde, Manuel B. Syquio (Syquio), Honorio Poblador, Jr. (Poblador), George T. Scholey (Scholey), Tirso Antiporda, Jr. (Antiporda), and Carlos L. Inductivo (Inductivo) were members of the HMOI Board of Directors.[28] Respondent Teodoro Valencia (Valencia) was likewise impleaded as part of HMOI,[29] although in what capacity, the affidavit-complaint does not clearly state.

PCGG contended that the loans extended by PNB to HMOI were in the nature of behest loans, being characterized by the following: *(a)* the loans were undercollateralized; *(b)* the

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[24] See *id.* at 74.

[25] *id.* at 108-124.

[26] See *id.* at 57-58.

[27] See Certification executed by PNB Corporate Secretary Renato J. Fernandez, on the list of PNB Directors for the Period 1964 to February 24, 1986, *id.* at 253-254.

[28] See *id.* at 61-62.

[29] See *id.* at 123.

borrower corporation was undercapitalized; *(C)* the stockholders, officers, or agents of the borrower corporation are identified as cronies; and *(d)* the extra-ordinary speed in which the loan release was made.[30] It asseverated that because PNB unduly accommodated HMOI, as evidenced by said loans which were grossly disadvantageous to the government, as well as the public, respondents must be prosecuted under Sections 3(e) and (g) of RA 3019.[31]

Only respondent Domingo submitted his counter-affidavit,[32] raising as defenses lack of personality of Atty. Chico, prescription, and insufficiency of evidence. He claimed that Atty. Chico had no personal knowledge of the questioned loan transactions between PNB and HMOI and was without any legal authority to prosecute or initiate the cases falling under RA 3019, as amended.[33] He also claimed that the action under RA 3019 had already prescribed, applying the original 10-year prescriptive period fixed by Section 11 thereof before it was amended on March 16, 1982 to 15 years. He maintained that the reckoning point to count the prescriptive period was from the time of commission of the act complained of, which should have been on February 1, 1980, the date of the execution of the first Loan Agreement. Even if the reckoning point was to be counted from the discovery of the offense, he contended that the date thereof would have been February 1986 after the EDSA Revolution. Thus, the complaint filed on December 15, 2004 was already barred by prescription.[34]

Likewise, he claimed that the collaterals used in obtaining the loans were valid and acceptable in the banking industry, and that other properties posted as security were overlooked by the PCGG. He also maintained that the PCGG made no

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[30] *ld*. at 120.

[31] See *id.* 120-121.

[32] Dated May 3, 2005. *Id.* at 289-312.

[33] See *id.* at 289-290.

[34] See *id.* at 290-296.

independent appraisal of the said properties and, thus, had no credible knowledge on the true value of the collaterals.[35] Finally, he denied that he was an identified "crony" of President Marcos.[36]

The Ombudsman Ruling

In a Resolution[37] dated July 28, 2006, the Ombudsman dismissed the complaint.[38] On the issue of prescription, it found that the complaint has not yet prescribed, having been filed within the 15-year prescriptive period reckoned from the date of the discovery of the commission of the offense, which is February 1, 1994, the date of the PCGG's Terminal Report from which it ascertained that the loan accounts of HMOI with PNB were behest.[39]

With respect, however, to the existence of probable cause to hold respondents liable as charged, the Ombudsman ruled in the negative. It held that the PCGG's argument that the loans were undercollateralized was specious, as the Committee did not make any independent valuation of the said collaterals. Neither did it secure any documentation which could show that HMOI exaggerated the value thereof. It also had no inventory of the properties acquired for the copper project and from the loan proceeds to show that HMOI merely used the same assets for the subsequent loans and exaggerated its value. Moreover, it held that future assets or after-acquired properties are acceptable securities and thus, not inimical to sound banking practice.[40]

Likewise, the Ombudsman found that there was nothing on the loan agreements to indicate that HMOI unduly influenced

[35] See *id*. at 297-299.

[36] See *id*. at 299-300.

[37] *Id*. at 56-102.

[38] *Id*. at 100.

[39] See *id*. at 83-85.

[40] See *id*. at 85-90.

PNB into granting it loans or that unwarranted favors had been extended to it. Thus, the presumption that regular duty was observed and exercised stands.[41] As regards the marginal note endorsement by President Marcos that purportedly paved the way for the approval of an additional loan, the Ombudsman held that there were no indications that the loan rested solely on said endorsement for its approva1.[42]

Dissatisfied, PCGG moved for reconsideration,[43] which was, however, denied in an Order[44] dated June 9, 2010; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the Ombudsman committed grave abuse of discretion when it found no probable cause to bold respondents liable for violation of Sections 3(e) and (g) of RA 3019 and consequently, dismissed the complaint for insufficiency of evidence.

The Court's Ruling

At the outset, it must be stressed that the Court does not ordinarily interfere with the Ombudsman's determination as to the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion.[45]

Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is

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[41] See *id*. at 95.

[42] See *id*. at 97-98.

[43] Dated July 3, 2009. *Id*. at 346-358.

[44] *Id*. at 103-107.

[45] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* 603 Phil. 18, 33 (2009).

exercised in an arbitrary and despotic manner by reason of passion or hostility.[46]

After a punctilious review of the records, the Court finds that such judicial intervention is justified and proper in this case.

Violation of Section 3 (e) of RA 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers.[47] Its elements are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; nd (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence[48]

On the other hand, Section 3(g) of RA 3019 does not require the giving of unwarranted benefits, advantages or preferences to private parties who conspire with public officers, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.[49] The elements of the offense are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[50]

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[46] *Unilever Philippines, Inc. v. Tan,* G.R. No. 179367, January 29, 2014, 715 SCRA 36, 45.

[47] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* 664 Phil. 16, 33 (2011).

[48] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 45, at 33-34.

[49] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 47.

[50] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 45, at 34.

Taking into consideration the foregoing elements, the Court finds that there may be liability arising from violation of Sections 3(e) and (g) of RA 3019.

The fact that PNB appeared to be unduly exposing its finances by extending iniquitous loans to HMOI, despite the latter being undercapitalized and, notwithstanding the inadequacy of the collaterals being offered to secure the loans, should have been sufficient basis for the Ombudsman to find probable cause. The HMOI loans appear to bear the badges of a behest loan, as indicated by the following circumstances: HMOI was undercapitalized, the loans extended to it by PNB were undercollateralized, its officers were identified as "cronies," President Marcos had a marginal note/endorsement on Ataydes March 10, 1981 letter which facilitated the approval of another loan in favor of HMOI, and the loans were approved with extraordinary speed.

It bears stressing that the duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file an information in court against the accused. A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime.[51] Taking into account the quantum of evidence needed to support a finding of probable cause, the Court finds that the Ombudsman committed grave abuse of discretion when it dismissed the complaint for lack of probable cause.

That the PCGG failed to make or submit an independent valuation of the properties in order to support its stance that the loans were undercollateralized is of no moment. Included in the records of this case is the Executive Summary[52] of the TWG, citing as evidence numerous documents from PNB[53]

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[51] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 47, at 34.

[52] *Rollo,* pp. 159-171.

[53] By virtue of a Deed of Transfer dated February 27, 1987, PNB transferred to the Republic of the Philippines its rights, titles, and interests in certain loans and assets which included the account of HMOI. See *id.* at 130-157.

showing, on its face, that the loans granted to HMOI by PNB were undercollateralized. Hence, the lack of independent valuation alone is not sufficient to dismiss the case for insufficiency of evidence to establish mere probable cause, To be sure; preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.[54]

It is incumbent upon the Ombudsman, while it asks the Court to respect its findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans.[55] On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.[56]

In the light of the foregoing, the Court finds probable cause to hold respondents for trial on the offenses charged, except for Domingo, whose criminal liability is extinguished in accordance with Article 89 (1)[57] of the Revised Penal Code on

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[54] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 47, at 34-35.

[55] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, supra* note 45, at 36.

[56] *Id.*

[57] Article 89. *How criminal liability is totally extinguished.*– Criminal liability is totally extinguished:

account of his death on June 26, 2008.[58] With respect to respondents Tanseco, Morales,[59] and Syquio,[60] the facts of their deaths must be confirmed with sufficient evidence before the same provision may apply to them.

WHEREFORE, the petition is **GRANTED.** The Office of the Ombudsman is hereby **ORDERED** to:

1. **DISMISS** the complaint against deceased respondent Panfilo O. Domingo;
2. **REQUIRE** the counsels of respondents Generoso Tanseco, Manuel Morales, and Manuel B. Syquio to submit proofs of their deaths; and
3. **FILE** with the Sandiganbayan the necessary information against respondents Renato D. Tayag, Ismael M. Reinoso, Ruben B. Ancheta, Geronimo Z. Velasco, Troadio Quiazon, Jr., Fernando Maramag, Edgardo Tordesillas, Arturo R. Tanco, Jr., Gerardo Sicat, Potenciano Ilusorio, Rafael M. Atayde, Honorio Poblador, Jr., George T. Sholey, Tirso Antiporda, Jr., Carlos L. Inductivo, and Teodoro Valencia.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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1. By the death of the convict, as to the personal penalties; and as to the pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment;

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[58] See Certificate of Death; *rollo,* p. 364.

[59] See Resolution dated July 28, 2014 which reported the results of the PCGG's investigation of some of the respondents, *id.* at 630-631 .

[60] See Letter dated October 14, 2014; *id.* at 648.

THIRD DIVISION

[G.R. No. 203322. February 24, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REMAN SARIEGO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; IN RESOLVING RAPE CASES, THE COURT HAS ALWAYS GIVEN PRIMORDIAL CONSIDERATION TO THE CREDIBILITY OF THE VICTIM'S TESTIMONY; ESTABLISHED IN CASE AT BAR.—** Article 266-A, paragraph (1) of the Revised Penal Code (RPC) provides the elements of the crime of rape: x x x In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony. In fact, since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof. In this case, the courts below expressly found that AAA testified in a categorical, straightforward, spontaneous and frank manner, evincing her credibility. As reproduced in the CA Decision, AAA's testimony during her direct examination clearly recounted, in detail, the series of events that transpired during the alleged incidents. Indeed, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.

2. **ID.; ID.; ID.; WHEN QUALIFIED; ELEMENTS.—** Article 266-B of the RPC provides that rape is qualified when certain circumstances are present in its commission, such as when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Hence, in

a conviction for qualified rape, the prosecution must prove that (1) the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. In other words, it is the concurrence of both the minority of the victim and her relationship with the offender that will be considered as a special qualifying circumstance, raising the penalty to the supreme penalty of death. Thus, it is imperative that the circumstance of minority and relationship be proved conclusively and indubitably as the crime itself; otherwise, the crime shall be considered simple rape warranting the imposition of the lower penalty of *reclusion perpetua.* If, at trial, both the age of the victim and her relationship with the offender are not proven beyond reasonable doubt, the death penalty cannot be imposed.

3. **ID.; ID.; ID.; AGE AS A QUALIFYING CIRCUMSTANCE; THE BEST EVIDENCE TO PROVE THE AGE OF A PERSON IS THE ORIGINAL BIRTH CERTIFICATE OR CERTIFIED TRUE COPY THEREOF, IN THEIR ABSENCE, SIMILAR AUTHENTIC DOCUMENTS MAY BE PRESENTED SUCH AS BAPTISMAL CERTIFICATES AND SCHOOL RECORDS; NOT ESTABLISHED IN CASE AT BAR.—** In *People v. Pruna,* the Court laid down the controlling guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance: x x x Thus, the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof, and in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and·the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused. x x x In sum, the Court finds that not only did the prosecution fail to adduce competent documentary evidence to prove AAA's minority such as her original or duly certified birth certificate, baptismal certificate, school records, or any other authentic documents as required by *Pruna,* it likewise failed to establish that said documents were lost, destroyed, unavailable, or otherwise totally absent. There is also nothing

in the records to show that AAA's mother or any member of her family, by affinity or consanguinity, testified on her age or date of birth. In like manner, while AAA may have testified as to her age during the trial, it was not clearly shown that the same was expressly admitted by appellant. Thus, AAA's minority cannot be appreciated as a qualifying circumstance against appellant herein. Indeed, qualifying circumstances must be proved beyond reasonable doubt just like the crime itself. In view of the prosecution's failure to establish AAA's minority with absolute certainty and clearness, the Court cannot sustain appellant's conviction for the crime of rape in its qualified form.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated December 9, 2011 of the Court of Appeals (*CA*) in CA-G.R. CEB-CR-H.C. No. 00721, which affirmed the Judgment[2] dated September 14, 2006 of the Regional Trial Court (*RTC*), 7th Judicial Region, Branch 14, Cebu City, in Criminal Case Nos. CBU-61972-73 for rape.

The antecedent facts are as follows:

In two (2) separate informations, appellant Reman Sariego was charged with two (2) counts of the crime of rape, committed by having carnal knowledge of his own daughter, AAA,[3] a 17-

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[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Victoria Isabela A. Paredes concurring; *rollo*, pp. 3-18.

[2] Penned by Judge Raphael B. Yrastorza, Sr.; CA *rollo*, pp. 17-20.

[3] In line with the Court's ruling in *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 426, citing Rule on Violence

year-old girl, against her will and to her damage and prejudice, the accusatory portions of which read:

Criminal Case No. CBU-61972:

x x x x x x x x x

That on December 15, 2000, at about 8:00 a.m., in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of AAA, a 17-year-old minor, by means of force and intimidation, did then and there wilfully, feloniously and unlawfully have carnal knowledge with said AAA against her will.

Contrary to law.

Criminal Case No. CBU-61973:

x x x x x x x x x

That on February 20, 2001, at about 8:00 a.m., in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of AAA, a 17-year-old minor, by means of force and intimidation, did then and there wilfully, feloniously and unlawfully have carnal knowledge with said AAA against her will.

Contrary to law.[4]

Upon arraignment, appellant pleaded not guilty to the offense charged.[5] Thereafter, during trial, the prosecution presented the testimonies of the victim AAA, and Dr. Jean Astercita.[6]

According to AAA, at about 8:00 a.m. on December 5, 2000, she was at home with her father and two (2) cousins washing clothes when her father asked her to buy cigarettes from a nearby

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Against Women and their Children, Sec. 40, Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed.

[4] *Rollo*, p. 5.

[5] *Id.* at 6.

[6] CA *rollo*, pp. 36-40.

store. When she returned, she went to the room in the second floor of her house to give her father the cigarettes she had bought. There, her father was already covered by a blanket in the dark. He held her hand and told her to turn her back and remove her short pants. When she refused, appellant removed her pants himself. He then proceeded to insert his penis into her vagina with her back towards him. He also told her to "stoop" on top of the table facedown. AAA kept asking her father the reason for his actions but he did not answer. After appellant satisfied his lust, AAA went to the comfort room downstairs to wash her private part.[7]

The same incident happened on February 20, 2001 while AAA's mother was selling goods at the Carbon Market.[8] AAA pleaded that appellant stop what he was doing to her because she might get pregnant, which would make her mother discover the horrific events, but to no avail. AAA revealed that on both occasions, she refrained from seeking help from her cousins who were in the same house because of fear that appellant might choke her mother, as what he would usually do in the past.[9] She also revealed that appellant would threaten that if she tells anyone of the incidents, he will kill all of them in their house.[10] She, however, could not keep the secret from her mother any longer because she became pregnant. When she gave birth, she left the baby in Norfeld, a place for unwed mothers subject to incest.[11]

After AAA's testimony, the prosecution presented Dr. Astercita to appear on behalf of Dr. Julius Caesar Santiago, her senior resident physician, the doctor who attended to AAA and prepared the medical certificate on his findings, but was no longer connected with the Vicente Sotto Memorial Medical Center (VCMMC). According to Dr. Astercita, the medical certificate states that

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[7] *Id.* at 17.

[8] *Id.* at 18.

[9] *Rollo*, p. 7.

[10] CA *rollo*, p. 18.

[11] *Id.*

the examination conducted on AAA's anus and genital area revealed that her hymen had deep notches at the seven and ten o'clock positions. This meant that there was a 50% previous laceration thereon. Dr. Astercita explained that it may have been caused by any blunt object inserted into AAA's vagina.[12] She further added that the examination on her abdomen also revealed that she was pregnant, which was later confirmed by an ultrasound report. Moreover, when asked the standard five questions in determining whether AAA was a victim of child abuse, AAA's answers showed a positive finding.[13]

In contrast, the defense presented the lone testimony of appellant himself, who simply denied the charges against him.[14] While admitting that AAA was, indeed, his daughter, appellant refuted any allegation of involvement in her pregnancy. Instead, he pointed out that it was AAA's boyfriend who impregnated her. He conceded, however, that he may have mauled his daughter in the past but such bodily harm was inflicted because she was fond of flirting with the opposite sex.[15]

On September 14, 2006, the RTC found appellant guilty beyond reasonable doubt of the two (2) counts of rape and rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is rendered finding accused, REMAN SARIEGO, GUILTY beyond reasonable doubt of two (2) counts of rape under subparagraph (a), paragraph (1) of ART. 266-A of the Revised Penal Code ("The Anti-Rape Law of 1997"-R.A. 8353) and upon him the indivisible penalty of reclusion perpetua.

Accused is, likewise, ordered to pay AAA the sum of

1.) SEVENTY-FIVE THOUSAND (₱75,000.00) PESOS, for and as civil liability; and

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[12] *Rollo*, p. 7.

[13] *Id.*

[14] CA *rollo*, p. 18.

[15] *Rollo*, p. 8.

2.) FIFTY THOUSAND (₱50,000.00) PESOS, for and as moral damages.

SO ORDERED.[16]

According to the RTC, the prosecution presented sufficient evidence proving, beyond reasonable doubt, that appellant had carnal knowledge of his daughter AAA. AAA testified in a categorical, straightforward, spontaneous and frank manner, evincing her credibility. The trial court cited several jurisprudential authorities in ruling that the fact that she failed to shout during the entire ordeal and that she waited until she became pregnant to report the matter to the authorities does not weaken her case. As to the presence of the element of force and intimidation, the RTC firmly ruled in the positive considering appellant's moral ascendancy over AAA, being the father thereof, as well as his threats to kill her and the whole family, not to mention his admitted acts of physical abuse.[17] In view of the prosecution's positive evidence, the trial court refused to give credence to appellant's bare denial and asseverations that it was AAA's boyfriend who impregnated her. When there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused, the testimony is worthy of full faith and credit.[18]

On appeal, the CA affirmed the RTC judgment finding appellant guilty beyond reasonable doubt of having carnal knowledge of his own daughter. It found AAA's testimony to be credible and corroborated by the results of the medical examination. It took into consideration the findings of the trial court on her credibility in view of its unique position of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying. The appellate court also noted the fact that AAA broke into tears while testifying, evinces the truth of the rape charges, for display

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[16] CA *rollo*, p. 20.

[17] *Id.* at 18-19.

[18] *Id.* at 18.

of such emotion indicates pain when asked to recount her traumatic experience.[19]

The CA, however, deemed it necessary to point out that AAA's minority was not duly established by the evidence on record. It ruled that while the Informations specifically alleged minority and relationship as qualifying circumstances, the birth certificate, which was identified by AAA as Exhibit "B" in the course of her testimony, was not formally offered in evidence.[20] This is because when the prosecution formally offered its documentary evidence orally, the document offered as Exhibit "B" was not the birth certificate of AAA but was actually the ultrasound report.[21] Since AAA's birth certificate was not offered in evidence, the same cannot be considered pursuant to Section 34[22] of Rule 132 of the Revised Rules on Evidence. Thus, the CA held that the qualifying circumstance of minority cannot be appreciated. It, however, deemed the circumstance of relationship sufficient to qualify the offense. Hence, the appellate court sustained the RTC's judgment finding appellant guilty of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count of rape, which would have been the death penalty without the passage of Republic Act No. 9346, prohibiting the imposition thereof.[23]

Consequently, appellant filed a Notice of Appeal[24] on January 26, 2012. Thereafter, in a Resolution[25] dated October 17, 2012, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days

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[19] *Rollo*, p. 14.

[20] *Id.* at 16.

[21] *Id.* at 17.

[22] Sec. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[23] *Rollo*, p. 17.

[24] *Id.* at 19.

[25] *Id.* at 26.

from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[26]

Appellant raises his suspicions as to why AAA, who was not alone in the house at the times of the alleged rape incidents, her cousins being merely on the ground floor, failed to shout for help or call the attention of said cousins. He also found surprising how, despite the proximity of their house to the barangay hall and police station, she chose not to immediately report the alleged incidents. Similarly, appellant questions AAA's decision to wait only until her mother noticed her pregnancy before she actually told her what had happened.[27] According to appellant, it was not he who impregnated her, but her boyfriend. Thus, he insists that AAA's bare statements that she was "raped" should not be deemed sufficient to establish his guilt for the crime of rape.[28]

We affirm appellant's conviction, but not for rape in its qualified form.

At the outset, the Court does not find any reason to depart from the findings of the courts below as to appellant's guilt. Article 266-A, paragraph (1) of the Revised Penal Code (RPC) provides the elements of the crime of rape:

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[26] CA *rollo*, p. 31.

[27] *Id.* at 36.

[28] *Id.* at 37.

Article 266-A. *Rape: When and How Committed.* — Rape is committed:

> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
> a) Through force, threat, or intimidation;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[29]

In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony. In fact, since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof.[30] In this case, the courts below expressly found that AAA testified in a categorical, straightforward, spontaneous and frank manner, evincing her credibility. As reproduced in the CA Decision, AAA's testimony during her direct examination clearly recounted, in detail, the series of events that transpired during the alleged incidents.[31] Indeed, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter

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[29] Article 266-A of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997).

[30] *People of the Philippines v. Domingo Gallano y Jaranilla*, G.R. No. 184762, February 25, 2015.

[31] *Rollo*, pp. 10-13.

the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.[32]

The Court notes, however, that appellant cannot be held guilty of the crime of rape in its qualified form. Article 266-B of the RPC provides that rape is qualified when certain circumstances are present in its commission, such as when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[33] Hence, in a conviction for qualified rape, the prosecution must prove that (1) the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[34] In other words, it is the concurrence of both the minority of the victim and her relationship with the offender that will be considered as a special qualifying circumstance, raising the penalty to the supreme penalty of death. Thus, it is imperative that the circumstance of minority and relationship be proved conclusively and indubitably as the crime itself; otherwise, the crime shall be considered simple rape warranting the imposition of the lower penalty of *reclusion perpetua*.[35] If, at trial, both the age of the victim and her relationship with the offender are not proven beyond reasonable doubt, the death penalty cannot be imposed.[36]

In this case, while it is undisputed that AAA is the daughter of appellant,[37] her minority was not conclusively established.

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[32] *People v. Padilla*, 617 Phil. 170, 183 (2009).

[33] Article 266-B of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997).

[34] *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 377.

[35] *People v. Barcela*, G.R. No. 208760, April 23, 2014, 723 SCRA 647, 666, citing *People v. Alemania*, 440 Phil. 297, 306 (2002).

[36] *People v. Arcillas*, 692 Phil. 40, 52 (2012).

[37] CA *rollo*, p. 35.

In *People v. Pruna*,[38] the Court laid down the following controlling guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents, such as baptismal certificate and school records which show the date of birth of the victim, would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
>
> 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.[39]

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[38] 439 Phil. 440 (2002).

[39] *Id.* at 470-471.

Thus, the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof, and in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused.[40]

In line with the foregoing guidelines, the Court holds that AAA's minority was not duly established by the evidence on record. As the appellate court ruled, while AAA's minority was specifically alleged in the Informations as qualifying circumstances, the birth certificate, which was identified by AAA as Exhibit "B" in the course of her testimony, was not formally offered in evidence because during the prosecution's formal offer of documentary evidence, the document offered as Exhibit "B" was not actually the birth certificate of AAA but was, in fact, the ultrasound report. Notably therefore, while the RTC stated in its judgment that "AAA testified that she was born on 18 April 1984 at the Cebu City Medical Center," citing her supposed Birth Certificate as "Exhibit B,"[41] a perusal of the minutes of the session held by the trial court on March 10, 2005 would show that the prosecution did not actually offer AAA's birth certificate but merely offered the following exhibits: (1) Exhibit A — Medical Certificate of victim AAA, (2) ***Exhibit B — Ultrasound Report***, (3) Exhibit C — Laboratory Report, and (4) Exhibit D — Five Direct Questions to Determine Victimization.[42] In fact, AAA's Birth Certificate is nowhere to

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[40] *People v. Paldo*, G.R. No. 200515, December 11, 2013, 712 SCRA 659, 676-677, citing *People v. Cayabyab*, 503 Phil. 606, 618 (2005).

[41] CA *rollo*, p. 17.

[42] *Id.* at 16.

be found in the Index of Original Record[43] issued by Atty. Aurora V. Peñaflor, the Branch Clerk of Court of the RTC, 7th Judicial Region, Branch 14, Cebu City. The only logical conclusion, therefore, is that the Birth Certificate was never really offered in evidence for it was never part of the records in the proceedings below. It must be noted, moreover, that when the appellate court rendered its judgment pointing to said failure to present AAA's birth certificate, the prosecution never raised any objection thereto before this Court, merely adopting its appellate brief filed before the CA. Hence, the Court finds that the prosecution, indeed, failed to adduce the best evidence to prove AAA's age. As Section 34, Rule 132 of the Rules of Court explicitly provides: "The court shall consider no evidence which has not been formally offered."

Furthermore, unfortunately for the prosecution, the records show that it likewise failed to present such other documentary and testimonial evidence which may suffice as substitutes for AAA's birth certificate, as enumerated in *Pruna*. For one, apart from AAA's purported birth certificate, which turned out to be her ultrasound report, the prosecution presented no other similar, authentic documentary evidence, such as baptismal certificates and school records. For another, while AAA's testimony may be admitted in evidence to prove her age, *Pruna* requires that the same must be expressly and clearly admitted by the accused. Regrettably, however, there is no such express admission herein. True, AAA had testified during trial that she was 17 years old at the time of the unfortunate incidents. Yet, nowhere in the records does it appear that appellant explicitly acknowledged AAA to be 17 years of age during the time when the alleged incidents occurred. Thus, AAA's testimony cannot be considered sufficient enough to prove her age.

In sum, the Court finds that not only did the prosecution fail to adduce competent documentary evidence to prove AAA's minority such as her original or duly certified birth certificate, baptismal certificate, school records, or any other authentic documents as required by *Pruna*, it likewise failed to establish

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[43] *Id.* at 5-7.

that said documents were lost, destroyed, unavailable, or otherwise totally absent. There is also nothing in the records to show that AAA's mother or any member of her family, by affinity or consanguinity, testified on her age or date of birth. In like manner, while AAA may have testified as to her age during the trial, it was not clearly shown that the same was expressly admitted by appellant. Thus, AAA's minority cannot be appreciated as a qualifying circumstance against appellant herein.

Indeed, qualifying circumstances must be proved beyond reasonable doubt just like the crime itself.[44] In view of the prosecution's failure to establish AAA's minority with absolute certainty and clearness, the Court cannot sustain appellant's conviction for the crime of rape in its qualified form. Consequently, appellant should only be convicted of the crime of simple rape, the penalty for which is *reclusion perpetua*. [45] Additionally, the damages awarded by the courts below should also be modified in line with prevailing jurisprudence.[46] Thus, the award of civil indemnity must be reduced to ₱50,000.00, while the award of moral damages in the amount of ₱50,000.00 shall be maintained. In addition, there shall be an award of exemplary damages in the amount of ₱30,000.00. Said amounts shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.[47]

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated December 9, 2011 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00721 with the **MODIFICATION** that appellant Reman Sariego is hereby found guilty beyond reasonable doubt of two (2) counts of simple rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape and to pay AAA the following amounts for each count of

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[44] *People v. Cial,* G.R. No. 191362, October 9, 2013, 707 SCRA 285, 297.

[45] REVISED PENAL CODE, Art. 266-B.

[46] *People of the Philippines v. Domingo Gallano y Jaranilla,* G.R. No. 184762, February 25, 2015.

[47] *Id.*

rape: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages, plus 6% interest *per annum* of all the damages awarded from finality of decision until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Perez,* and *Reyes*, *JJ.*, concur.

THIRD DIVISION

[G.R. No. 206256. February 24, 2016]

ALBERT C. AUSTRIA, *petitioner, vs.* **CRYSTAL SHIPPING, INC., and/or LARVIK SHIPPING A/S, and EMILY MYLA A. CRISOSTOMO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; FOR DISABILITY BENEFITS TO BE COMPENSABLE TWO ELEMENTS MUST CONCUR; EXPLAINED.—** Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other. x x x For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: l. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the describe[d] risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; [and] 4. There was no notorious negligence on the part of the seafarer.

2. **ID.; ID.; ID.; ID.; COMPENSABILITY OF AN AILMENT DOES NOT DEPEND ON WHETHER THE INJURY OR DISEASE WAS PRE-EXISTING AT THE TIME OF EMPLOYMENT BUT RATHER IF THE DISEASE OR INJURY IS WORK-RELATED OR AGGRAVATED THE CLAIMANT'S CONDITION; ELUCIDATED.—** Even if it were shown that petitioner's condition is congenital in nature, it does automatically take his ailment away from purview of compensability. Pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided seafarer's working conditions bear causal connection with his illness. As succinctly pointed above, petitioner's working environment as chef constantly exposed him to factors that could aggravate his heart condition. Compensability of an ailment does not depend on whether the injury or disease

was pre-existing at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having the weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. The degree of contribution of the employment to the worsening of the seafarer's condition is not significant to the compensability of the illness. x x x Although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability. The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by the employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence.

3. **ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); IN LABOR DISPUTES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NLRC WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.—** To justify the grant of extraordinary remedy of *certiorari,* the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia,* its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

APPEARANCES OF COUNSEL

R.C. Carrera & Associates for petitioner.
Sugay Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

For resolution of the Court is the instant Petition for Review on *Certiorari* filed by petitioner Albert C. Austria (Petitioner), seeking to reverse and set aside the Decision[1] dated 4 September 2012 and Resolution[2] dated 13 March 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117578. The assailed decision and resolution reversed the National Labor Relations Commission (NLRC) Decision dated 17 August 2010 and its Resolution dated 14 October 2010 and thereby found the disability of the petitioner not compensable under the Collective Bargaining Agreement (CBA).

The Facts

Respondent Crystal Shipping, Inc., is a foreign juridical entity engaged in maritime business. It is represented in the Philippines by its manning agent, and co-respondent herein, Larvik Shipping A/S, a corporation organized and existing under Philippine laws.

Petitioner was hired by Crystal Shipping thru its manning agent, Larvik Shipping as Chief Cook. His employment was to run for a period of eight months and he was to receive, *inter alia*, a basic monthly salary of US$758.00 with an overtime pay of US$422.00 each month as evidenced by his Contract of Employment.[3] Under his contract, petitioner was covered by the Norwegian International Ship Register (NIS)-CBA.

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[1] *Rollo*, pp. 34-48; penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring.

[2] *Id.* at 50-51.

[3] *Id.* at 81.

Prior to the execution of the contract, petitioner underwent a thorough Pre-Employment Medical Examination (PEME) and after compliance therewith, he was certified as "*fit to work*" by the company designated physician.

On 27 August 2008, petitioner commenced his work as Chief Cook on board M/V Yara Gas. Sometime in the last week of September 2008, petitioner, while on board the vessel, started suffering from chronic cough with excessive phlegm and experienced difficulty breathing. He immediately reported his condition to the medical officer on board. Upon the arrival of the vessel in Hamburg, Germany, petitioner was referred for medical examination and it was found that he was suffering from "*Bronchial Catarrh/Bronchitis; Pharnx Irritation*."[4] After giving him proper medication, the examining physician declared him "*fit for duty*" and so he resumed his work in the vessel.

In January 2009, petitioner again complained of similar symptoms, excessive cough with phlegm and difficulty breathing, and, was again referred for further medical examination in the Netherlands. This time he was confined at ZorgSaam Hospital from 20 January 2009 to 12 February 2009 where he was diagnosed with "*Dilated Cardiomyopathy secondary to Viral Myocarditis*," a condition which would require further medical treatment and management. Considering the seriousness of his ailment, petitioner's repatriation back to the Philippines was recommended by doctors.

Escorted by a physician, petitioner arrived in the Philippines on 14 February 2009 and was immediately confined at the Metropolitan Medical Center. After a series of tests, it was found that petitioner was suffering from "*Dilated Cardiomyopathy, Bicuspid Aortic Stenosis*," rendering him unfit for any sea duty.[5]

Claiming that his illness that rendered him totally unfit for any sea duty is work-related, petitioner sought for the payment

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[4] *Id.* at 111.

[5] *Id.* at 128-134.

of permanent disability benefits but respondents failed or refused to acknowledge that they are liable under the CBA. This prompted petitioner to initiate an action for recovery of permanent disability benefits in accordance with the NIS CBA, moral and exemplary damages, attorney's fees and other benefits. Petitioner asserted that he was in good health when he joined the vessel and assumed his duties as chief cook as shown by his PEME. There is a high probability, however, that the extreme working conditions in the vessel, the lifestyle on board, constant exposure to chemicals, intensive heat and extreme weather changes caused to or aggravated his illness. He asserted that he is entitled to the amount of US$110,000.00 as disability compensation under Article 12 of the NIS CBA.

For their part, respondents disavowed liability for the illness of petitioner citing the medical report of the company designated physician that "*Dilated Cardiomyopathy, Bicuspid Aortic Stenosis*" is a condition that is congenital in nature and is not caused or aggravated by his work as a Chief Cook. They posited that due to non-exploratory nature of PEME, serious diseases that require intensive test could not be discovered before the seafarer's employ. There is a high probability therefore that petitioner could be suffering from the said ailment prior to his engagement.

For failure of the parties to reach an amicable settlement, reception of position papers from respective parties ensued and the case was eventually submitted for the resolution of the Labor Arbiter.

On 14 January 2010, the Labor Arbiter rendered a Decision in favor of petitioner, and, ordered respondents to pay him total disability benefits in the amount of US$110,000.00 pursuant to the CBA. The dispositive portion of the Labor Arbiter's Decision reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents to pay [petitioner] jointly and severally the following:
>
> 1. Permanent disability benefits in the sum of US$110,000.00 in accordance with the CBA;

2. Moral and exemplary damages in the sum of US$3,000.00; and

3. Attorney's fees in the sum equivalent to 10% of the judgment award.

All other claims are hereby dismissed for utter lack of merit.

SO ORDERED.[6]

On appeal, the NLRC affirmed with modification the ruling of the Labor Arbiter in a Decision dated 17 August 2010 deleting the award of moral and exemplary damages. The *fallo* of the NLRC Decision reads:

"**WHEREFORE**, premises considered, judgment is hereby rendered finding the award of full disability benefits, sickness allowance and attorney's fees proper while damages are hereby ordered deleted from the monetary award. Accordingly, the Decision of the Labor Arbiter dated January 10, 2010 is hereby MODIFIED. All other dispositions not otherwise modified STANDS.

SO ORDERED."[7]

For lack of merit, the Motion for Reconsideration of the respondents was denied by the NLRC in a Resolution dated 14 October 2010.

Ascribing grave abuse of discretion, respondents elevated the adverse NLRC ruling to the Court of Appeals.

On 4 September 2012, the Court of Appeals rendered a Decision[8] reversing the ruling of both the Labor Arbiter and the NLRC. The appellate court gave credence to the findings of the company accredited physician that the illness of the petitioner was congenital in nature and could not be caused by his working condition in any way. According to the Court of Appeals, the most common cause of aortic stenosis in younger people is a congenital bicuspid valve, in which the aortic valve

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[6] *Id.* at 38; records, p. 74.

[7] *Id.* at 39.

[8] *Supra* note 1.

consists only of two “cusps” (*i.e.*, flaps) instead of the normal three. In fine, the appellate court held that “[petitioner] failed to establish that his medical condition was work related or that it contributed or exposed him to the risk of contracting the same in the course of his employment.”

Similarly ill-fated was petitioner’s Motion for Reconsideration which was denied by the appellate court in a Resolution[9] dated 13 March 2013.

The Issue

Unflinching, petitioner is now before this Court *via* this instant Petition for Review on *Certiorari* assailing the Courts of Appeals’ Decision and Resolution on the following grounds:

I.

x x x PETITIONER [WAS] RENDERED TOTALLY UNFIT AS [A] SEAFARER IN ANY CAPACITY DUE TO WORK RELATED AND WORK AGGRAVATED ILLNESSES ENTITLING HIM TO FULL DISABILITY COMPENSATION UNDER THE CBA.

II.

THAT THE DECISION OF THE HONORABLE NLRC AFFIRMING THE DECISION OF THE LABOR ARBITER IS JUDICIOUS AND MERITORIOUS AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.[10]

The Court’s Ruling

The Court resolves to grant the petition.

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the

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[9] *Id.* at 50.

[10] *Id.* at 16-17.

POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other.[11]

Section 20 (B), paragraph 6 of the 2000 POEA-SEC[12] reads:

Section 20-B. *Compensation and Benefits for Injury or Illness.* —

The liabilities of the employer when the seafarer suffers **work-related injury or illness** during the term of his contract are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. x x x

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[13]

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any

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[11] *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al.*, 630 Phil. 352, 362 (2010).

[12] Department Order No. 4, series of 2000 is entitled Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

[13] *Supra* note 11 at 362-363.

sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the describe[d] risks;
3. The disease was contacted within a period of exposure and under such other factors necessary to contract it; [and]
4. There was no notorious negligence on the part of the seafarer.[14]

The ultimate question that needs to be addressed in the case at bar is whether or not the illness which caused the repatriation of petitioner is an occupational disease and thus compensable as permanent total disability under the circumstances.

We rule in the affirmative.

In dismissing the claim of petitioner that his ailment is compensable, the appellate court disregarded the rulings of both the Labor Arbiter and the NLRC and tilted the scale in favor of the employers who in turn, harped on the findings of the company-designated physician that the condition of the petitioner is congenital in nature, and, that there is no way that it could be contracted while he was under their employ.

We do not agree.

To justify the grant of extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual

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[14] *Nisda v. Sea Serve Maritime Agency, et al.*, 611 Phil. 291, 316 (2009).

refusal to perform the duty enjoined by or to act all in contemplation of law.[15]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[16]

Gauged by the foregoing yardstick, the Court finds that the Court of Appeals committed a reversible error in attributing grave abuse to the NLRC for awarding compensation to the petitioner for his illness after the latter established his claim by substantial evidence. We find that there is a cogent legal basis to conclude that petitioner has successfully discharged the burden of proving that his condition was aggravated by his working condition.

For one, petitioner was employed by respondent as *Chief Cook* which constantly exposes him to heat while preparing the food for the entire crew all throughout the day while he was under employ. The steady and prolonged exposure to heat naturally causes exhaustion which could unduly burden his heart and interfere with the normal functioning of his cardio-vascular system.

In simple terms, petitioner's ailment called *dilated cardiomyopathy* is a condition in which the heart's ability to pump blood is decreased because the heart's main pumping chamber, the left ventricle, is enlarged and weakened.[17] In petitioner's case, his *dilated cardiomyopathy* is caused by a bicuspid aortic valve. Bicuspid aortic valve is an aortic valve that only has two leaflets, instead of three.[18] The aortic valve regulates blood flow from the heart into the aorta, the major

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[15] *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, 12 November 2014.

[16] *Id.*

[17] www.medicinenet.com

[18] www.medlineplus.com

blood vessel that brings blood to the body.[19] Bicuspid aortic valve is present at birth (congenital). An abnormal aortic valve develops during the early weeks of pregnancy, when the baby's heart develops. The cause of this problem is unclear, but it is the most common congenital heart disease. It often runs in families.[20]

Even if it were shown that petitioner's condition is congenital in nature, it does automatically take his ailment away from purview of compensability. Pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided seafarer's working conditions bear causal connection with his illness.[21] As succinctly pointed above, petitioner's working environment as chef constantly exposed him to factors that could aggravate his heart condition.

Compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is work-related or aggravated his condition.[22] It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be free from disease.[23] Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having the weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person.[24] The degree of contribution of the employment to the worsening of the seafarer's condition is not significant to the compensability of the illness, thus:

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[19] *Id.*

[20] *Id.*

[21] *Status Maritime Corporation, et al. v. Spouses Delalamon,* G.R. No. 198097, 30 July 2014, 731 SCRA 390, 409.

[22] *NYK-Fil Ship Management, Inc. v. Talavera*, 591 Phil. 786, 800 (2008).

[23] *Id.*

[24] *Id.*

"[W]e awarded benefits to the heirs of the seafarer therein who worked as radioman on board a vessel; and who, after ten months from his latest deployment, suffered from bouts of coughing and shortness of breath, necessitating open heart surgery. We found in said case that the seafarer's work exposed him to different climates and unpredictable weather, which could trigger a heart attack or heart failure. **We likewise ruled in said case that the seafarer had served the contract for a significantly long amount of time, and that his employment had contributed, even to a small degree, to the development and exacerbation of the disease."** [25] [Emphasis supplied]

Although the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability. The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by the employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence. x x x[26]

All told, petitioner having established through substantial evidence that his illness was aggravated by his work condition, and hence, compensable, no grave abuse of discretion can be imputed against the NLRC in upholding the Labor Arbiter's grant of disability benefits. For reasons herein detailed, the Court finds that the decision of the NLRC is devoid of capriciousness or whimsicality.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals are hereby **REVERSED**. The decision of the Labor Arbiter as modified by the decision of the National Labor Relations Commission, granting petitioner permanent disability benefits and attorney's fees in the sum equivalent to 10% of the award, is hereby **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.*, concur.

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[25] *Supra* note 14 at 319.

[26] *Magsaysay Maritime Services v. Laurel,* G.R. No. 195518, 20 March 2013, 694 SCRA 225, 245-246.

THIRD DIVISION

[G.R. No. 207816. February 24, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAUL YAMON TUANDO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF THE ACCUSED; THE ACCUSED HAS THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; APPLICATION IN CASE AT BAR.—** As embodied in Section 14 (1), Article III of the 1987 Constitution, no person shall be held to answer for a criminal offense without due process of law. Further, paragraph 2 of the same section, it provides that in all criminal prosecutions, the accused has a right to be informed of the nature and cause of the accusation against him. It is further provided under Sections 8 and 9 of Rule 110 of the Revised Rules of Court that a complaint or information to be filed in court must contain a designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it and the acts or omissions complained of as constituting the offense. In *Patula v. People*, the Court emphasized the importance of the proper manner of alleging the nature and cause of the accusation in the information: x x x He was sufficiently informed of the crime he was accused of. This is clear from the defense that he mounted, *i.e.*, that the victim is his sweetheart and that they treated each other as spouses. In short, Tuando was not denied of his constitutional right and was given every opportunity to answer the accusation against him.
2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; WHEN QUALIFIED; ESTABLISHED IN CASE AT BAR.—** Under Article 266 (A) (1) of the Revised Penal Code, rape is committed through the following acts: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: "a) Through force, threat, or intimidation; "b) When the offended party is deprived of reason or otherwise unconscious; "c) By

means of fraudulent machination or grave abuse of authority; and "d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. The rape is qualified under paragraph 1, Article 266-B of the same code if the victim is under 18 years of age and the offender is the common-law spouse of the parent of the victim. In this case, We find that the prosecution was able to prove that Tuando had sexual intercourse with AAA, the then 13 year old daughter of his common-law wife, against her will. The prosecution was able to present the evidence to support conviction for qualified rape: that (1) the accused had carnal knowledge of the victim under 18 years of age at the time of rape; (2) said act was accomplished (a) through the use of force, when he boxed her hand while inserting his penis into AAA's private organ, (b) through the threat of killing AAA's family and (c) through intimidation being the common-law spouse of the victim's mother. The concurrence of both the minority of the victim, as proven by her birth certificate, and her relationship with her offender, qualified the rape raising the penalty to death. In *People v. Floro Barcela* it is essential, as in this case, that both circumstances must be alleged in the criminal complaint or information and proven as the crime itself.

3. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** Under Article 266-B of the Revised Penal Code, the penalty of death shall be imposed when the victim of rape is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. However, upon the effectivity of Republic Act No. 9346 prohibiting the imposition of death penalty in the Philippines, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death penalty, shall be imposed on Tuando.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals dated 27 September 2012 in CA-G.R. CR-HC No. 04720, which affirmed with modifications the Decision[2] dated 26 August 2010 of the Regional Trial Court (RTC), Branch 69, Pasig City (stationed in Taguig City) in Criminal Case No. 134740-H, finding accused Raul Yamon Tuando (Tuando) guilty of qualified rape under Article 266-A (1) (c) in relation to Article 266-B (1) of the Revised Penal Code.[3]

On 9 January 2007, an Information was filed against Tuando against which he pleaded not guilty.

> That on or about January 2006 in Taguig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, actuated by lust, and abusing his authority over AAA, daughter of his common law wife, did, then and there willfully, unlawfully and feloniously succeeded in having sexual intercourse with said AAA, who was then thirteen (13) years old at the time of the commission of the offense, against her will and consent and to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

The factual antecedents are the following:

The victim AAA, in her testimony and sworn statement, narrated that she was 13 years old and a resident of Taguig

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[1] Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring; CA *rollo*, pp. 120-142.

[2] Penned by Presiding Judge Lorifel Lacap Pahimna; records, pp. 204-215.

[3] Republic Act No. 8353, 30 September 1997, an act expanding the definition of the crime of rape, reclassifying the same as a crime against persons, amending for the purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for other purposes otherwise known as "The Anti-Rape Law of 1997."

[4] Records, p. 1.

City. She recalled that during the month of January 2006, upon coming home from school at noon-time, Tuando offered her softdrinks, which she accepted and drank. After consuming it, she felt dizzy. It was at this moment that Tuando pulled her inside the bedroom and put her on the bed. Tuando then removed her school uniform and undergarments, kissed her and laid himself on top of AAA. She tried to resist his advances but he boxed her hand and threatened to kill her whole family. Thereafter, he kissed the victim's breasts and inserted his penis inside the victim's private organ despite pleas to stop. After satisfying his lust, Tuando again threatened the victim not to tell her mother about what happened. Then he left her. Since then, Tuando continued raping her upon arriving from school with threats to kill her family.[5]

Months later, AAA's mother BBB noticed that AAA was not having her monthly menstrual period. Upon the advice of her employer, BBB brought AAA to a local health center but she was told to bring her child to the Child Protection Unit of Philippine General Hospital (PGH) for medical examination.[6] There, she was medically examined by Dr. Irene Baluyot (Dr. Baluyot) of PGH. On 11 July 2006, Dr. Baluyot confirmed through her Final Medico-Legal Report that AAA was 20 to 22 weeks pregnant.[7] It was at this moment that AAA revealed to BBB that Tuando raped her.[8] BBB brought AAA to her employer's house and let her stay there until she gave birth on 3 September 2006.[9]

On 7 October 2006, AAA was again raped by Tuando when she went back to their house to visit her brothers. She decided to spend the night inside the house upon learning that Tuando was not around during that time. However, late in the evening,

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[5] TSN of AAA, 3 March 2008, pp. 8-12; *Sinumpaang Salaysay*; records, pp. 144-145.

[6] *Sinumpaang Salaysay* of BBB; records, pp. 142-143.

[7] Final Medico-Legal Report; *id.* at 154.

[8] *Sinumpaang Salaysay*; *id.* at 145.

[9] *Id.*

she was awakened when she felt that Tuando was on top of her and started kissing her. Tuando covered her mouth and raped her again, this time with a knife poked at her.[10]

The next day, AAA told BBB that she was raped again by Tuando. Prompted by the abuse on her daughter, BBB filed a complaint before the *barangay* officials, who in turn, invited Tuando to their office for questioning. Thereafter, AAA and BBB proceeded to the National Bureau of Investigation (NBI) Office to report the rape and executed their respective sworn statements about the crime.[11] The *barangay* officials transferred Tuando to the NBI for investigation.[12]

Tuando denied raping AAA. He testified that sometime in the year 2005, he and AAA had a relationship like a husband and wife but only started to be sexually intimate in January 2006. Their relationship was kept secret because during that time, he and BBB were still in a common-law relationship. On June 2006, BBB came to know of his relationship with AAA when she noticed that the latter was getting very close to him. Turning her anger on her daughter, she scolded and brought AAA to her (BBB) employer's house.[13]

Tuando told the court that he knew that it was AAA's brother CCC who filed the case against him out of revenge when he scolded him.[14]

At the end of his testimony, Tuando insisted that he never forced AAA to submit to sexual intercourse; that it was consensual and that it was committed out of love. Finally, he found nothing wrong in his relationship with AAA despite her minority and the fact that she is the daughter of his common-law spouse.[15]

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[10] *Id.*

[11] *Id.* at 142-143.

[12] *Id.* at 150-151.

[13] TSN of Raul Y. Tuando, 1 September 2009, pp. 5-9.

[14] *Id.* at pp. 9-10.

[15] *Id.* at 19-20 and TSN of Tuando, 1 September 2009, pp. 22-23.

On 26 August 2010, after the trial, the RTC found that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. It found credible AAA's narration that she was raped by the accused sometime in January 2006. It emphasized that the victim testified in a straightforward, candid and natural manner in her recollection of her harrowing ordeal in the hands of the accused.

On the other hand, the trial court rejected the sweetheart defense advanced by the accused as the reason for his sexual congress of AAA. It anchored its denial on the fact that the accused failed to present any affirmative evidence to substantiate his claim such as mementos, love letters, notes or any picture proving that he and the victim were indeed sweethearts.

Convinced that Tuando raped AAA, the court found the accused guilty:

> **WHEREFORE**, finding accused Ramon Yamon Tuando guilty beyond reasonable doubt of Qualified Rape, the court hereby sentences him to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. He is also ordered to pay AAA the amount of [₱]75,000.00 for civil indemnity; [₱]75,000.00 for moral damages; and [₱]25,000.00 for exemplary damages to deter others similarly minded, with perverse tendencies and aberrant sexual behavior from preying upon the children victims.[16]

Upon appeal, the Court of Appeals affirmed with modifications the ruling of the trial court, the dispositive portion reads:

> WHEREFORE, premises considered, the assailed decision is AFFIRMED subject however to the following MODIFICATIONS:
>
> a) The grant of exemplary damages is increased to [₱]30,000.00.
>
> b) Appellant is further ordered to support the offspring born as consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

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[16] Records, p. 215.

SO ORDERED.[17]

The appellate court found no error on the conviction of the accused. It placed more weight on the findings of fact of the trial judge who was in the best position to competently rule on the veracity of AAA's testimony. On the other hand, it gave scant consideration to the argument of the accused that AAA's continued performance of her regular household duties was contrary to the conduct of a rape victim. It further ruled that Tuando's threats to AAA's life and her family, coupled with the status of the accused as a common-law spouse of AAA's mother, was sufficient intimidation to put AAA to abject submission.

Hence, this present appeal.

Before this Court, Tuando raises the following assignment of errors: *(1)* The appellate court gravely erred in convicting the accused-appellant under a different criminal information thereby violating his right to be informed of the nature and cause of accusation against him; *(2)* The appellate court gravely erred when it convicted the accused-appellant when his guilt has not been proven beyond reasonable doubt; *(3)* The appellate court gravely erred in giving credence to the private complainant's testimony despite being contrary to common human experience.

We dismiss the appeal for lack of merit.

On the first issue of denial of due process, Tuando contends that his right to be informed of the nature and cause of accusation against him was violated when the appellate court affirmed his conviction despite the fact that the crime of which he was convicted by the trial court was different from the one he pleaded to and was charged with. To support his argument, he cited the case of *People v. Valdesancho*[18] where the Court acquitted the accused due to the denial of his right to due process as he was charged with rape committed on 15 August 1994 and 16 August 1994,

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[17] CA *rollo*, pp. 140-141.

[18] 410 Phil. 556, 569 (2001).

but was convicted for crimes of rape committed on 15 and 16 August 1993.

We disagree with the accused. His reliance on *Valdesancho* is misplaced.

In *Valdesancho*, the accused was charged with two sets of information for rape committed against AAA on 15 August 1994 and 16 August 1994, respectively. During the presentation of evidence, the prosecution submitted evidence proving that the victim was raped on the said dates. In his defense, the accused interposed alibi and proved that he was in another town when the incidents happened. He was also able to prove that on the said dates, the victim was no longer living with them and was already residing in another town. However, upon promulgation of the decision, the trial court convicted the accused for raping the victim on 15 and 16 August 1993. It reasoned that due to the tender age of the victim and educational attainment, she could not possibly remember the dates when she was raped by the accused. On appeal, this Court acquitted the accused and held that his right to due process was violated since he was not able to present evidence to prove where he was on 15 and 16 August 1993. He was not given any opportunity to defend himself of the crimes of rape allegedly committed on the earlier dates.

The circumstances in *Valdesancho* are different from that of the present case.

In this case, the accused was charged with rape committed sometime in January 2006 against AAA. He was able to present evidence proving where he was on January 2006 when the crime was committed. In fact, he was able to present evidence based on sweetheart defense in that he and AAA were lovers and that they had a consensual sexual intercourse on the said date. During trial, he testified that he and AAA were in a secret relationship as husband and wife and he was surprised when he was charged with rape.

As embodied in Section 14 (1), Article III of the 1987 Constitution, no person shall be held to answer for a criminal offense without due process of law. Further, paragraph 2 of

the same section, it provides that in all criminal prosecutions, the accused has a right to be informed of the nature and cause of the accusation against him. It is further provided under Sections 8 and 9 of Rule 110 of the Revised Rules of Court that a complaint or information to be filed in court must contain a designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it and the acts or omissions complained of as constituting the offense.

In *Patula v. People*,[19] the Court emphasized the importance of the proper manner of alleging the nature and cause of the accusation in the information:

> x x x An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.[20]

The appellant cannot rely on the foregoing cases. He was sufficiently informed of the crime he was accused of. This is clear from the defense that he mounted, i.e., that the victim is his sweetheart and that they treated each other as spouses. In short, Tuando was not denied of his constitutional right and was given every opportunity to answer the accusation against him.

Now, the merits.

Tuando assails that the prosecution failed to present sufficient evidence to convict him of qualified rape. He finds fault in the decision of the trial court and Court of Appeals in its reliance mainly on the testimony of AAA and on the alleged weakness of the defense evidence.

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[19] 685 Phil. 376, 388 (2012).

[20] *Id.*

We disagree.

Under Article 266 (A) (1) of the Revised Penal Code,[21] rape is committed through the following acts:

> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
> "a) Through force, threat, or intimidation;
> "b) When the offended party is deprived of reason or otherwise unconscious;
> "c) By means of fraudulent machination or grave abuse of authority; and
> "d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The rape is qualified under paragraph 1, Article 266-B of the same code if the victim is under 18 years of age and the offender is the common-law spouse of the parent of the victim.[22]

In this case, We find that the prosecution was able to prove that Tuando had sexual intercourse with AAA, the then 13 year old daughter of his common-law wife, against her will. The prosecution was able to present the evidence to support conviction for qualified rape: that (1) the accused had carnal knowledge of the victim under 18 years of age at the time of rape; (2) said act was accomplished (a) through the use of force, when he boxed her hand while inserting his penis into AAA's private organ, (b) through the threat of killing AAA's family and (c) through intimidation being the common-law spouse of the victim's mother.

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[21] "*The Anti-Rape Law of 1997*," Republic Act No. 8353, 30 September 1997.

[22] Art. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The concurrence of both the minority of the victim, as proven by her birth certificate,[23] and her relationship with her offender, qualified the rape raising the penalty to death. In *People v. Floro Barcela*[24] it is essential, as in this case, that both circumstances must be alleged in the criminal complaint or information and proven as the crime itself.[25]

We find credibility with AAA's narration that she was raped by Tuando. It was when the victim's senses were weakened by dizziness that the accused laid her on top of the bed. He undressed the victim, kissed her and inserted his penis inside the victim's private organ despite appeals and struggle against the act. Not just the victim but her entire family was threatened with death if she would expose the commission of the offense.

Dr. Baluyot confirmed in her final evaluation report that there was definite evidence of sexual abuse and sexual contact committed against AAA.[26]

On the other hand, we cannot sustain the sweetheart defense presented by Tuando that he and AAA were involved in a romantic relationship as that of husband and wife, hence justifying the sexual intercourse between them.

As testified to by the accused, he and BBB were common-law spouses living under the same roof with the children of the latter, including AAA. After four years, he now claims before this Court that upon his separation from BBB, he entered into a romantic relationship, this time with the minor daughter of his former partner. When the trial judge asked the accused if he found nothing wrong with his relationship with a minor, he answered negatively. It is hard for this Court to fathom that a minor, a 13-year old child-woman, would enter into a relationship with a man thrice her age and worse, a former common-law spouse of her own mother. It is even absurd, if not disturbing,

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[23] Records, p. 153.

[24] G.R. No. 208760, 23 April 2014, 723 SCRA 647.

[25] *Id.* at 666.

[26] *Id.* at 154.

to even entertain the thought that a child like AAA, who has been living with her step father, the accused, since she was 9 years old, would freely consent to sexual intercourse with the accused in their own home.

We reiterate the principle that no young girl such as AAA would concoct a sordid tale, on her own or through the influence of her mother BBB or even his brother CCC, and undergo the ordeal of having her private parts examined by a medical doctor, of being questioned by NBI operatives about the details of how she was raped by Tuando, then eventually being subjected to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.[27]

As often repeated by the Court:

> Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[28]

All told, we are convinced that the elements constituting the crime of qualified rape were sufficiently established.

Finally, as a desperate attempt to escape conviction, Tuando points to the supposedly incredible conduct of his victim living what to the accused was a normal life. He insisted that AAA's act of doing her usual chores and regular attendance at school is unusual for a rape victim.

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[27] *People v. Cuaycong*, G.R. No. 196051, 2 October 2013, 706 SCRA 644, 658; *People v. Edgar Padigos,* 700 Phil. 368, 376 (2012).

[28] *People v. Cuaycong, supra* at 658-659.

Understanding the last issue presented, the accused is trying to destroy the credibility of AAA due to the fact that she tried to live a normal life despite being raped by him. The accused finds fault with AAA when she continued to live normally after she was sexually abused.

There is ample basis to conclude that AAA's resumption to normal life after the commission of rape cannot be taken against her. A victim's reaction after a harrowing experience, especially in a crime of rape, is subjective and not everyone responds in the same way. There is no standard form of behavior that can be anticipated of a rape victim following her sexual abuse.[29] People respond differently to emotional stress, particularly minor children subjected to such level of emotional trauma.

With respect to the penalty, the Court affirms the penalties imposed by the Court of Appeals with modifications.

Under Article 266-B of the Revised Penal Code, the penalty of death shall be imposed when the victim of rape is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. However, upon the effectivity of Republic Act No. 9346[30] prohibiting the imposition of death penalty in the Philippines, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death penalty, shall be imposed on Tuando.[31] Hence, the Court affirms the imposition of penalty meted by the Court of Appeals.

Pursuant to our recent rulings in *People v. Gambao*[32] and recently by *People v. Colentava*,[33] we modify the award of damages to AAA from ₱75,000.00 to ₱100,000.00 as civil indemnity, ₱75,000.00 to ₱100,000.00 as moral damages and ₱30,000.00 to ₱100,000.00 as exemplary damages, for qualified rape.

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[29] *People v. Lomaque*, 710 Phil. 338, 352 (2013).

[30] Approved on 24 June 2006.

[31] *People v. Colentava*, G.R. No. 190348, 9 February 2015; *People of the Philippines v. Jose Estalin Prodenciado*, G.R. No. 192232, 10 December 2014.

[32] G.R. No. 172707, 1 October 2013, 706 SCRA 508.

[33] *Supra* note 28.

All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.[34]

We also affirm the ruling of the appellate court ordering Tuando to provide financial support to AAA's offspring pursuant to Article 345 of the Revised Penal Code.[35]

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated 27 September 2012 in CA-G.R. CR-HC No. 04720, finding accused-appellant **RAMON YAMON TUANDO** guilty of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED with the following modifications:**

(1) Appellant RAUL YAMON TUANDO is ordered to pay the victim "AAA" ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages;

(2) All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this decision until fully paid;

(3) Appellant is further ordered to support the offspring born as a consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Peralta,* and *Reyes, JJ.*, concur.

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[34] *People v. Colentava, supra* note 28.

[35] Article 345. Civil liability of persons guilty of crimes against chastity. — Person guilty of rape, seduction or abduction, shall also be sentenced:

1. To indemnify the offended woman.
2. To acknowledge the offspring, unless the law should prevent him from so doing.
3. In every case to support the offspring.

[*] Per Raffle dated 22 February 2016.

FIRST DIVISION

[G.R. No. 208404. February 24, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE LUGNASIN and DEVINCIO GUERRERO,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (AS AMENDED BY REPUBLIC ACT NO. 7659); KIDNAPPING FOR RANSOM; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The accused-appellants were charged and convicted under Article 267 of the Revised Penal Code as amended by Republic Act No. 7659, *viz*.: x x x From the aforequoted provision, in prosecuting a case involving the crime of *Kidnapping for Ransom*, the prosecution must establish the following elements: (***i***) the accused was a private person; (***ii***) he kidnapped or detained or in any manner deprived another of his or her liberty; (***iii***) the kidnapping or detention was illegal; and (***iv***) the victim was kidnapped or detained for ransom. A painstaking review of the present case clearly shows that all the aforestated elements were proven in the criminal case on review. The testimony of Cordero sufficiently established the commission of the crime and both the accused-appellants' culpability. He positively identified in and out of court accused-appellants Vicente and Devincio as two of his abductors. As the kidnap victim, a private individual, Cordero's positive identification of both accused-appellants – as two of several men who abducted him from the gate of his house, who brought him to a hut somewhere in the south, who chained him to a bed, who essentially deprived him of liberty without lawful cause for four days, and, which deprivation of his liberty was for the purpose of extorting ransom from his family – collectively establish the crime of *kidnapping for ransom* as the actions of both the accused-appellants were certain and clear, and their intent was explicit and made known to Cordero himself.
2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE APPELLATE COURT, ARE**

ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT; APPLICATION IN CASE AT BAR.— As oft-explained, when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This holds truer if such findings are affirmed by the appellate court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed. Herein, there is nothing farfetched or incredible in Cordero's testimony. Both accused-appellants failed to show that it was physically impossible for Cordero to recognize them, as in fact, Cordero had the unhindered view of his captors' faces before he was even blindfolded. Therefore, Cordero's eyewitness account deserves full faith and credit.

3. **ID.; ID.; ID.; OUT-OF-COURT IDENTIFICATION; WHEN VALID; ELUCIDATED.—** *People v. Teehankee, Jr.* is instructive on the rules and test for a valid out-of-court identification: Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz*.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. But assuming for the sake of argument that Cordero's out-of-court identification was improper, it will

have no bearing on the conviction of the accused-appellants. We have ruled as follows: [I]t is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it. x x x. Cordero's in-court identification was made with certainty when he pointed to both accused-appellants in court when he was asked to identify them from among the people inside the courtroom. It is apparent in the case at bar that Cordero was able to categorically, candidly, and positively identify both accused-appellants as two of his abductors both outside and inside the court. Thus, his identification of the accused is worthy of credence and weight.

4. **ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; ACTIVE PARTICIPATION IN THE TRIAL AND POSITING DEFENSES WITHOUT MENTIONING THE ALLEGED WARRANTLESS ARREST IS DEEMED WAIVER OF THE RIGHT TO QUESTION THE ARREST; CASE AT BAR.—** Accused-appellant Devincio insists that his warrantless arrest was illegal for not falling under the permissible warrantless arrests enumerated in Section 5, Rule 113 of the Rules of Court. x x x As the Court of Appeals has already pointed out, that accused-appellant Devincio raised none of these issues anytime during the course of his trial. These issues were raised for the first time on appeal before the Court of Appeals. We affirm the ruling of the Court of Appeals x x x *Miclat, Jr. v. People* on this Court's treatment of an accused's belated allegation of the illegality of his warrantless arrest: x x x The foregoing ruling squarely applies to accused-appellants Devincio and Vicente who failed to raise their allegations before their arraignment. They actively participated in the trial and posited their defenses without mentioning the alleged illegality of their warrantless arrests. They are deemed to have waived their right to question their arrests.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

DECISION

LEONARDO-DE CASTRO, *J.*:

For review is the January 23, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02971, which affirmed with modification the March 24, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 76, Quezon City, in Criminal Case No. Q-99-87600, entitled "*People of the Philippines v. Vicente Lugnasin, Tito Lugnasin, Excelso Lugnasin, Elmer Madrid, Rogelio Baldaba and Devincio Guerrero,*" wherein accused-appellants Vicente Lugnasin (Vicente) and Devincio Guerrero (Devincio) were found guilty beyond reasonable doubt of the crime of kidnapping for ransom.

On October 15, 1999, the Department of Justice filed an Information against Vicente, Devincio and four other individuals, namely, Tito E. Lugnasin (Tito), Excelso B. Lugnasin (Excelso), Elmer A. Madrid (Elmer), Rogelio D. Baldaba (Rogelio), and five other unidentified individuals: John Doe, Peter Doe, Richard Doe, George Doe, and James Doe, for the crime of *kidnapping for ransom* defined and penalized under Article 267 of the Revised Penal Code. The Information reads:

> That on or about April 20, 1999 in Quezon City and within the jurisdiction of this Honorable Court accused VICENTE LUGNASIN, TITO LUGNASIN, EXCELSO LUGNASIN, ELMER MADRID, ROGELIO BALDABA, DEVINCIO GUERRERO, and other persons whose identities ha[ve] not yet been ascertained, while conspiring, conniving and confederating with one another, did then and there with criminal and malicious intent, with the use of force, threat and intimidation, with firearms, take and carry away the person of Nicassius Cordero, to the Municipality of Tanauan, Province of Batangas, detaining him thereat, depriving Nicassius Cordero of his liberty, against his free will and consent, for the purpose of extorting ransom money for his safe release from detention said

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[1] *Rollo*, pp. 4-16; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez concurring.

[2] CA *rollo*, pp. 26-44; penned by Judge Monina A. Zenarosa.

demand for the payment of ransom money was made on the relatives of Nicassius Cordero, and the same was release[d] in the evening of April 24, 1999 along the South Luzon Expressway.[3]

When arraigned on November 5, 2001, accused-appellant Vicente pleaded not guilty to the crime charged. Accused-appellant Devincio likewise pleaded not guilty when he was arraigned on March 6, 2002. Both accused-appellants made no stipulation during their respective pre-trial conferences except for their identities and the jurisdiction of the court.

The nine other accused remain at large.

The facts succinctly synthesized by the RTC are as follows:

The prosecution's lone witness, Nicassius Cordero narrated in court how he was abducted while opening the garage door of his residence in Mindanao Avenue in the late evening of April 20, 1999 by three armed men. He identified Devincio Guerrero as the man with a 38 cal. revolver who came from his left side and pushed him inside the car. The man who came from his right side and identified later as Tito Lugnasin drove the car with Elmer Madrid riding at the back. After divesting him of his ₱5,000.00 cash and asking some questions, he realized he was being kidnapped for ransom. Repeatedly, he declared that he was not a rich man. Along Libis, another cohort, Celso Lugnasin, rode with them until they reached the South Superhi[gh]way and after paying the toll fee, they drove on for about fifteen minutes and stopped just behind an owner type jeepney before they switched places. The jeepney driver introduced himself as Commander and drove the car. [Cordero] saw Commander's face. He was later identified as Vicente Lugnasin. After driving for some minutes more, they alighted, [Cordero's] abductors placed the car's sunvisor around his face and ordered him to walk barefooted towards a small house. [Cordero] was kept there for four days, while they negotiated with Saleena, his sister-in-law for the ransom money. On the fourth day, Commander was already angry and threatened to finish him off. He was eventually released, without ransom money being paid.

Vicente Lugnasin, a resident of Luzviminda I, Dasmariñas Quezon City denied the accusation, saying he only saw Cordero for the first

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[3] *Id.* at 10.

time at the Department of Justice and Cordero could not even identify him. He recounted that on May 14, 1999[,] while preparing for the town fiesta celebration, policemen came to his residence and arrested him and his brother Tito [and] cousin Excelsio for alleged involvement in a robbery case. They were tortured, then put on display for media men to feast on and for alleged victims to identify. After posting bail, he was later arrested for illegal possession of firearms. He was also charged with two other cases, a bank robbery and the Mercury Bank robbery, both pending before the sala of Judge Jose Mendoza.

Devincio Guerrero, a fish vendor at the Pasig Market, likewise denies any involvement in the kidnap[ping] of Cordero. He swears he saw him for the first time only in the courtroom. He recalled that nearing Holy Week in 2002[,] five uniformed policemen arrested him without a warrant in Lucena City, where he used to buy smoked fish to sell. He was transferred to Camp Karingal before being detained at the QC Jail, where he is detained up to the present. On May 14, 1999[,] he was a sponsor at a baptism of the child of his *kumpadre* in Bgy. Luzviminda, Dasmariñas, Cavite. On his way home, he was accosted by police officers while urinating along the roadside. He was detained first at the Cavite City Jail then at the Trece Martires jail. He saw Vicente Lugnasin only at the Quezon City Jail.[4]

The Court of Appeals also made a finding that accused-appellant Vicente made known their intentions when he asked Cordero about his work, family, and a contact person, and told him that they would be demanding 30 Million Pesos as ransom for his release.[5]

Ruling of the RTC

On March 24, 2003, the RTC, resolving the lone issue of "*whether [or not] Cordero's identification of Vicente Lugnasin and Devincio Guerrero as among his kidnappers is reliable*,"[6] promulgated its Decision, finding both accused-appellants guilty beyond reasonable doubt of the crime charged, to wit:

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[4] *Id.* at 39-40.

[5] *Roll*o, p. 7.

[6] *Id.* at 41.

WHEREFORE, finding the accused Vicente Lugnasin and Devincio Guerrero guilty beyond reasonable doubt of the crime of kidnapping for ransom described and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659 in conspiracy with each other and other Does, the Court hereby sentences them to each suffer the penalty of Death and to indemnify jointly and severally the private complainant Nicassius Cordero the amount of ₱50,000.00 as moral damages.

The warrants of arrest issued against the other accused remain.[7]

In convicting the accused-appellants, the RTC found Cordero to be a careful, truthful, and candid witness, whose story was supported by the evidence submitted. It added that this was in contrast to the accused-appellants' bare denial of their participation in the kidnapping. The RTC also pointed out that Cordero was able to identify both accused-appellants as he saw their faces before he was blindfolded.

Ruling of the Court of Appeals

On January 23, 2013, the Court of Appeals affirmed the accused-appellants' conviction with modification as to the penalty. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the instant appeals are hereby **DISMISSED** for lack of merit.

The Decision dated March 24, 2003 of the Regional Trial Court, Branch 76, Quezon City, in Criminal Case No. Q-99-87600, is **MODIFIED** in that the penalty of death imposed upon appellants is AMENDED to ***Reclusion Perpetua, without the possibility of parole***.[8]

The Court of Appeals held that the elements of the crime of kidnapping for ransom were established by the prosecution through its lone witness, Cordero, whose credible testimony should be accorded great weight. It also ruled that Cordero's identification of his abductors conformed to the stringent

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[7] *Id.* at 43-44.

[8] *Id.* at 16.

guidelines of out of court identification, contrary to accused-appellant Devincio's assertion that it was marked with suggestiveness.[9]

As regards accused-appellant Devincio's argument that his warrantless arrest was illegal since it did not fall under Section 6, Rule 109 of the Rules of Procedure, as amended, the Court of Appeals held that accused-appellant Devincio's right to question his arrest and subsequent inquest/preliminary investigation is deemed waived due to his failure to raise such argument before his arraignment.[10]

Addressing accused-appellant Devincio's claim that his rights under Republic Act No. 7438, entitled "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof" were violated, the Court of Appeals pointed out that he neither offered any evidence nor executed an extrajudicial confession or admission for such allegation.[11]

Finally, in light of Republic Act No. 9346, which prohibits the imposition of the death penalty, the Court of Appeals modified the penalty from Death to *reclusion perpetua* without the possibility of parole.[12]

Both accused-appellants are now before this Court praying for a reversal of their conviction on the same arguments upon which their appeal to the Court of Appeals were anchored.[13]

Issues

Accused-appellant Devincio assigned the following errors in his Appellant's Brief:

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[9] *Id.* at 12.

[10] *Id.* at 14.

[11] *Id.* at 15.

[12] *Id.* at 15-16.

[13] *Id.* at 26-30.

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE LONE PROSECUTION WITNESS.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING [DEVINCIO] GUILTY NOTWITHSTANDING THE PRESENCE OF SUGGESTIVENESS IN [THE] IDENTIFICATION BY THE PRIVATE COMPLAINANT OF THE APPELLANT AS ONE OF HIS ABDUCTORS.

III

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING [DEVINCIO]'S WARRANTLESS ARREST AS ILLEGAL.

IV

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT [DEVINCIO]'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSONS ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.[14]

Accused-appellant Vicente, for his part, posed a lone error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [VICENTE] DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

Ruling of this Court

This Court finds no compelling reason to overturn the assailed judgment of conviction.

Elements of Kidnapping for Ransom established.

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[14] CA *rollo*, pp. 249-250.

[15] *Id.* at 356.

The accused-appellants were charged and convicted under Article 267 of the Revised Penal Code as amended by Republic Act No. 7659,[16] *viz.*:

> ART. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
> 2. If it shall have been committed simulating public authority.
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.
>
> The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.
>
> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

From the aforequoted provision, in prosecuting a case involving the crime of *Kidnapping for Ransom*, the prosecution must establish the following elements: (***i***) the accused was a private person; (***ii***) he kidnapped or detained or in any manner deprived another of his or her liberty; (***iii***) the kidnapping or detention was illegal; and (***iv***) the victim was kidnapped or detained for ransom.[17]

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[16] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes.

[17] *People v. Awid and Ganih*, 635 Phil. 151, 158-159 (2010).

A painstaking review of the present case clearly shows that all the aforestated elements were proven in the criminal case on review.

The testimony of Cordero sufficiently established the commission of the crime and both the accused-appellants' culpability. He positively identified in and out of court accused-appellants Vicente and Devincio as two of his abductors. As the kidnap victim, a private individual, Cordero's positive identification of both accused-appellants — as two of several men who abducted him from the gate of his house, who brought him to a hut somewhere in the south, who chained him to a bed, who essentially deprived him of liberty without lawful cause for four days, and, which deprivation of his liberty was for the purpose of extorting ransom from his family — collectively establish the crime of *kidnapping for ransom* as the actions of both the accused-appellants were certain and clear, and their intent was explicit and made known to Cordero himself.

Identification of the Accused-Appellants.

This Court cannot sustain both accused-appellants' arguments casting doubt on Cordero's positive identification of their participation in the commission of the crime. As oft-explained, when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This holds truer if such findings are affirmed by the appellate court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[18]

Herein, there is nothing farfetched or incredible in Cordero's testimony. Both accused-appellants failed to show that it was

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[18] *People v. Basao*, 697 Phil. 193, 208-209 (2012), citing *Decasa v. Court of Appeals,* 554 Phil. 160, 180 (2007) and *Nueva España v. People*, 499 Phil. 547, 556 (2005).

physically impossible for Cordero to recognize them, as in fact, Cordero had the unhindered view of his captors' faces before he was even blindfolded. Therefore, Cordero's eyewitness account deserves full faith and credit.

But accused-appellant Devincio avers that the length of time, which has elapsed from the time Cordero was released, up to the time he identified his abductors would have already affected his memory, such that the possibility of error in his identification of the abductors could not be discounted. He also insists that Cordero's "subsequent identification of [him] in open court should be disregarded since the initial identification was seriously flawed, *i.e.*, it was characterized by suggestiveness."[19]

On the other hand, accused-appellant Vicente argues that although denial is an inherently weak defense, it assumes importance and acquires commensurate strength when the prosecution's evidence, particularly as to the identity of the accused as the author of the crime, is feeble, doubtful, inconclusive, or unreliable. He says that Cordero's identification of his abductors was questionable due to the circumstances during his abduction and detention, *i.e.*, it was dark when he was abducted, he was instructed to go down on the floor of the vehicle and not to look at his kidnappers, he was blindfolded, and his eyeglasses were removed.[20]

With the foregoing, both accused-appellants claim that the RTC erred in relying on Cordero's identification of them as two of his abductors as it was doubtful and unreliable.

This Court disagrees.

The trial court and the Court of Appeals correctly found the out-of-court identification made by Cordero to have satisfied the totality of circumstances test.

People v. Teehankee, Jr.[21] is instructive on the rules and test for a valid out-of-court identification:

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[19] CA *rollo*, pp. 257-258.

[20] *Id.* at 364-366.

[21] 319 Phil. 128, 180 (1995).

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz*.: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. (Citation omitted.)

Cordero was able to see the faces of the men who abducted him from his house due to the light emanating from the pedestrian gate. He was also able to describe how these men approached him, the kind of firearms they were carrying, how the men acted where they passed, where he was taken, and even the sounds he heard. Cordero's testimonies were replete with detailed descriptions of how he was abducted and who abducted him. To top it all, he was confident that he could identify his abductors, as he did at the Criminal Investigation and Detection Group (CIDG), Camp Pantaleon Garcia, Imus, Cavite,[22] and in open court.

This Court notes with approval the observation of the RTC, *viz*.:

Cordero gave a detailed narration of his abduction that fateful night of April 20, 1999. We observed his demeanor, his reactions to questions asked of him. He was a careful witness, truthful and candid. At times, we noted that he was in tears at the painful

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[22] CA *rollo*, p. 154; TSN, June 11, 2002, p. 16.

recollection of the horror he went through. His story was supported by the evidence submitted.[23]

And as the Court of Appeals said, "Cordero was endeavoring to remember faces and incidents and etch these in his memory."[24] In *People v. Martinez*[25] we held:

> Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed. x x x. All too often, the face of the assailant and his body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his memory.

Cordero positively identified both accused-appellants Devincio and Vicente as two of his kidnappers. He saw both accused-appellants' faces before he was blindfolded. Thus, it cannot be said that the length of time between the crime and the identification of the accused-appellants, which was only 26 days, had any effect on Cordero's memory, to render his positive identification flawed.

Accused-appellant Devincio's contention that Cordero's out-of-court identification was marked by suggestiveness must similarly fail for his failure to support it by solid evidence. The only reason he gave for such argument was Cordero's knowledge that the persons who were being investigated in connection with a robbery case were included in the police or photographic line-up. However, that is not enough to strike down Cordero's identification for being tainted. The Office of the Solicitor General (OSG) was on point when it quoted this Court's ruling in *People v. Villena*[26] as follows:

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[23] *Id.* at 41.

[24] *Rollo*, p. 13.

[25] 469 Phil. 558, 570-571 (2004).

[26] 439 Phil. 509, 524-525 (2002); CA *rollo*, p. 310.

Eyewitness identification is often decisive of the conviction or acquittal of an accused. Identification of an accused through mug shots is one of the established procedures in pinning down criminals. However, ***to avoid charges of impermissible suggestion, there should be nothing in the photograph that would focus attention on a single person.*** x x x. (Citation omitted.)

As the OSG averred, the photographs shown to Cordero contained nothing to suggest whom he should pick and identify as his abductors.[27] Cordero testified as follows:

Cordero They asked me to see a lineup and I said I was still very afraid of them so they showed me different photographs and asked if I co[u]ld identify who my abductors were and from a series of photos, I was able to identify Vicente Lugnasin, Celso Lugnasin, Elmer Madrid, Guerrero and I could not yet identify de Chaves but I saw him there walking around.[28]

But assuming for the sake of argument that Cordero's out-of-court identification was improper, it will have no bearing on the conviction of the accused-appellants. We have ruled as follows:

[I]t is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that may have attended it. x x x.[29] (Citation omitted.)

Cordero's in-court identification was made with certainty when he pointed to both accused-appellants in court when he was asked to identify them from among the people inside the courtroom.

It is apparent in the case at bar that Cordero was able to categorically, candidly, and positively identify both accused-

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[27] CA *rollo*, p. 310.

[28] *Id.* at 154; TSN, June 11, 2002, p. 16.

[29] *People v. Sabangan*, G.R. No. 191722, December 11, 2013, 712 SCRA 522, 548.

appellants as two of his abductors both outside and inside the court. Thus, his identification of the accused is worthy of credence and weight. This Court, in *People v. Cenahonon*[30] said:

> An affirmative testimony merits greater weight than a negative one, especially when the former comes from a credible witness. Categorical and positive identification of an accused, without any showing of ill motive on the part of the witness testifying on the matter, prevails over alibi and denial, which are negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence. (Citation omitted.)

As to the Alleged Illegality of Accused-appellant Devincio Guerrero's Warrantless Arrest and the Violation of His Rights Under Republic Act No. 7438.

Accused-appellant Devincio insists that his warrantless arrest was illegal for not falling under the permissible warrantless arrests enumerated in Section 5, Rule 113 of the Rules of Court.[31] This being the case, accused-appellant Devincio says, the RTC had no jurisdiction to render judgement over his person. He also claims that there was no showing that he was informed of his Constitutional rights at the time of his arrest and his rights under Sections 2 and 3 of Republic Act No. 7438 during investigation.[32]

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[30] 554 Phil. 415, 430 (2007).

[31] Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[32] CA *rollo*, pp. 260-263.

As the Court of Appeals has already pointed out, that accused-appellant Devincio raised none of these issues anytime during the course of his trial. These issues were raised for the first time on appeal before the Court of Appeals. We affirm the ruling of the Court of Appeals and quote below *Miclat, Jr. v. People*[33] on this Court's treatment of an accused's belated allegation of the illegality of his warrantless arrest:

> At the outset, it is apparent that petitioner raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.
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> In the present case, at the time of petitioner's arraignment, there was no objection raised as to the irregularity of his arrest. Thereafter, he actively participated in the proceedings before the trial court. In effect, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused. (Citations omitted.)

The foregoing ruling squarely applies to accused-appellants Devincio and Vicente who failed to raise their allegations before their arraignment. They actively participated in the trial and posited their defenses without mentioning the alleged illegality of their warrantless arrests. They are deemed to have waived their right to question their arrests.

As regards accused-appellant Devincio's argument that his rights under Republic Act No. 7438 were violated, we likewise uphold the following ruling of the Court of Appeals:

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[33] 672 Phil. 191, 203 (2011).

With respect to appellant Devincio's argument that his rights under RA 7438 were violated while he was under custodial investigation, aside from his bare-faced claim, he has offered no evidence to sustain such claim; and appellant Devincio (or appellant Vicente, for that matter) has not executed an extrajudicial confession or admission for, as stated in *People vs. Buluran and Valenzuela*:

> There is no violation of the constitutional rights of the accused during custodial investigation since neither one executed an extrajudicial confession or admission. In fact, the records show that appellant Cielito Buluran opted to remain silent during custodial investigation. Any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction.[34] (Citation omitted.)

Damages Awarded.

The RTC awarded Cordero Fifty Thousand Pesos (₱50,000.00) as moral damages. However, pursuant to prevailing jurisprudence, the Court finds it proper to modify such award as follows:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages; and
3. ₱100,000.00 as exemplary damages to set an example for the public good.[35]

"The award of exemplary damages is justified, the lowering of the penalty to *reclusion perpetua* in view of the prohibition of the imposition of the death penalty notwithstanding, it not being dependent on the actual imposition of the death penalty but on the fact that a qualifying circumstance warranting the imposition of the death penalty attended the kidnapping."[36]

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[34] *Rollo*, p. 15.

[35] *People v. Con-ui*, G.R. No. 205442, December 11, 2013, 712 SCRA 764, 774.

[36] *People v. Pepino*, 636 Phil. 297, 312 (2010).

The accused-appellants shall be jointly and severally liable for these amounts awarded in favor of Cordero. In addition, these amounts shall accrue interest at the rate of six percent (6%) per annum, to earn from the date of the finality of this Court's Decision until fully paid.[37]

WHEREFORE, the Decision of the Court of Appeals dated January 23, 2013 in CA-G.R. CR.-H.C. No. 02971 finding accused-appellants Vicente Lugnasin and Devincio Guerrero **GUILTY** beyond reasonable doubt of the crime of kidnapping for ransom under Article 267 of the Revised Penal Code, as amended by Section 8 of Republic Act No. 7659, and sentencing them to suffer the penalty of *reclusion perpetua* without eligibility of parole is **AFFIRMED with modification**. Accused-appellants Vicente Lugnasin and Devincio Guerrero are ordered to pay Nicassius Cordero the following:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages; and
3. ₱100,000.00 as exemplary damages.

The foregoing amounts shall accrue interest at the rate of six percent (6%) per annum, to earn from the date of the finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

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[37] *People v. Con-ui, supra* note 35 at 775.

FIRST DIVISION

[G.R. No. 208948. February 24, 2016]

JOSE B. LURIZ, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE PARTAKES OF A LAND REGISTRATION PROCEEDING; DETERMINES WHETHER OR NOT THE CERTIFICATE OF TITLE SOUGHT TO BE RECONSTITUTED IS AUTHENTIC, GENUINE, AND IN FORCE AND EFFECT AT THE TIME IT WAS LOST OR DESTROYED.— The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. It partakes of a land registration proceeding. Thus, it must be granted only upon **clear proof that the title sought to be restored was indeed issued to the petitioner or his predecessor-in-interest, and such title was in force at the time it was lost or destroyed.** In the present case, the reconstitution petition is anchored on a purported owner's duplicate copy of TCT No. 1297 —a source for reconstitution of title under Section 3 (a) of Republic Act No. (RA) 26. Based on the provisions of the said law, the following must be present for an order of reconstitution to issue: *(a)* the certificate of title had been lost or destroyed; (*b)* the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) the petitioner is the registered owner of the property or had an interest therein; *(d)* the certificate of title was in force at the time it was lost and destroyed; and (*e)* the description, area, and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. Particularly, when the reconstitution is based on an extant owner's duplicate TCT, **the main concern is the authenticity and genuineness of the certificate.** As priorly intimated, they are but determinations of whether or not the certificate of title sought to be reconstituted is authentic, genuine, and in force and effect at the time it was lost or destroyed, which, based on case law, are central

to resolving petitions for reconstitution of title. Clearly, a reconstitution of title proceeding involves only the re-issuance of a new certificate of title lost or destroyed in its original form and condition. In this light, the court does not pass upon the ownership of the land covered by the lost or destroyed certificate, as the said matter should be threshed out in a separate proceeding for the purpose.

APPEARANCES OF COUNSEL

Camara Meris Aquino Madrid & Associates and *Pagui Law & Forensic Document Office* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 15, 2013 and the Resolution[3] dated August 30, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 95148, which reversed and set aside the Decision[4] dated December 15, 2009 of the Regional Trial Court of Quezon City, Branch 83 (RTC) in LRC Case No. Q-8922 (97), thereby dismissing the petition for reconstitution filed by petitioner Jose B. Luriz (Luriz).

The Facts

On May 26, 1997, Luriz filed before the RTC a verified Amended Petition[5] for reconstitution (reconstitution petition)

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[1] *Rollo*, pp. 14-30.

[2] *Id.* at 57-68. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

[3] *Id.* at 70-71.

[4] *Id.* at 33-55. Penned by Presiding Judge Ralph S. Lee.

[5] Dated April 25, 1997. *Id.* at 98-99.

of Transfer Certificate of Title (TCT) No. 1297[6] of the Registry of Deeds of Quezon City (RD-QC) in the name of his predecessor-in-interest, Yoichi Urakami (Urakami), covering Lots 8 and 10, Block 260 of Subdivision Plan PSD-18527 situated in Quezon City (subject properties), with an area of 1,517 square meters (sq. m.) and 1,516.50 sq. m., respectively. The case was docketed as LRC Case No. Q-8922 (97).[7]

Luriz alleged that Urakami was the registered owner of the subject properties who sold the same to Tomas Balingit (Balingit) by virtue of a Deed of Absolute Sale[8] dated February 12, 1948 (February 12, 1948 deed of sale) who, in turn, sold the same to him through a Deed of Absolute Sale[9] dated January 31, 1975 (January 31, 1975 deed of sale).[10] However, the original copy of TCT No. 1297 with the RD-QC was destroyed by the fire that gutted the Quezon City (QC) Hall in June 1988; hence, the reconstitution petition based on the owner's duplicate copy of TCT No. 1297[11] (questioned certificate).

Finding the reconstitution petition to be sufficient in form and substance, the RTC issued an Amended Order[12] dated June 11, 1997 (June 11, 1997 Amended Order), setting the case for initial hearing on September 25, 1997 and directing that the concerned government offices and the adjoining property owners be furnished a copy thereof. The RTC likewise ordered that notice of the reconstitution petition be published in the Official Gazette once a week for two (2) consecutive weeks and posted at least thirty (30) days prior to the scheduled hearing at the main entrance of the RTC's courtroom and on the bulletin board

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[6] Records, Vol. 1, p. 5, including dorsal portion.

[7] See *rollo*, pp. 33-34 and 36.

[8] *Id.* at 117-118 (pages are inadvertently misarranged).

[9] *Id.* at 114-115.

[10] See *id.* at 98.

[11] See *id.* at 33 and 98.

[12] *Id.* at 108. Issued by Executive Judge Estrella T. Estrada.

of the Sheriff's Office.[13] The notice was published in the August 11, 1997 (Vol. 93, No. 32) and August 18, 1997 (Vol. 93, No. 33) issues of the Official Gazette[14] and posted as required.[15]

The Republic of the Philippines (Republic) filed its Supplemental Opposition[16] declaring that it is the registered owner of the subject properties as evidenced, *inter alia*, by the following documents: (a) Vesting Order No. P-89[17] dated April 9, 1947 of the Philippine Alien Property Administration of the United States of America (US) confiscating the same as properties belonging to citizens of an enemy country, Japan; (b) Transfer Agreement[18] dated May 7, 1953 between the President of the Philippines and the Attorney General of the US, transferring all of the latter's right, title and interest to the subject properties to the Government of the Republic; (c) Ledger Sheet[19] of the Board of Liquidators describing the dealings in the said properties; (d) Proclamation No. 438[20] issued on December 23, 1953 reserving the subject properties for dormitory site purposes of the North General Hospital; and (e) Proclamation No. 732[21] issued on February 28, 1961 revoking Proclamation No. 438 and reserving the subject properties, instead, for dormitory site purposes of the National Orthopedic Hospital, now Philippine Orthopedic Center (POC), which is presently in possession thereof.

After compliance with the jurisdictional requirements, the RTC allowed Luriz to present his evidence.[22]

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[13] *Id.*

[14] See Certificate of Publication of the National Printing Office issued on August 18, 1997; *id.* at 112.

[15] See Certificate of Posting issued on September 24, 1997; *id.* at 113.

[16] Dated August 17, 1998. *Id.* at 182-186.

[17] *Id.* at 195-196.

[18] *Id.* at 198-202.

[19] *Id.* at 204.

[20] *Id.* at 223-224.

[21] *Id.* at 222.

[22] See *id.* at 37.

In the interim, or on November 4, 1997, the Republic filed a Motion for Examination of Documents by the National Bureau of Investigation[23] (NBI) seeking to determine the genuineness and due execution of the questioned certificate and the February 12, 1948 and January 31, 1975 deeds of sale, which was granted in an Order[24] dated June 15, 1998. Consequently, the Republic submitted NBI Questioned Documents Report No. 733-998[25] dated November 10, 1998 rendered by NBI Document Examiner III Zenaida J. Torres (Ms. Torres) concluding that the questioned certificate is not genuine, and presented the testimony of Ms. Torres affirming said finding.[26]

In rebuttal, Luriz presented the report[27] and testimony of Atty. Desiderio A. Pagui (Atty. Pagui), a retired NBI Document Examiner, who likewise conducted a scientific comparative examination of the questioned certificate, but opined that the two (2) signatures of the Register of Deeds of Quezon City (Register of Deeds-QC) appearing in the questioned certificate are genuine.[28]

On the other hand, the other oppositor, Fidel Villanueva (Villanueva), who similarly asserted ownership over the subject properties on the basis of a purported administratively reconstituted TCT No. 65677,[29] no longer participated in the proceedings after his motion to set aside the June 11, 1997 Amended Order and the September 25, 1997 hearing was denied by the RTC.[30]

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[23] Records, Vol. 1, pp. 160-162.

[24] *Id.* at 201-204.

[25] Records, Vol. 2, pp. 755-756.

[26] See *rollo*, p. 41.

[27] Report No. 10-2006 dated December 11, 2006; records, Vol. 2, pp. 877-883.

[28] *Id.* at 882.

[29] Purportedly by virtue of an Order dated January 20, 1997 issued by the Land Registration Authority in Adm. Reconstitution No. Q-536 (97). See Villanueva's Opposition; records, Vol. 1, pp. 71-74.

[30] See *rollo*, p. 38.

The RTC Ruling

In a Decision[31] dated December 15, 2009, the RTC granted Luriz's reconstitution petition and thereby, ordered the Register of Deeds-QC to reconstitute the lost/destroyed original copy of TCT No. 1297.[32] It held that Luriz was able to prove the existence[33] of the said title and his interest in the subject properties.[34] On the other hand, it found that the evidence presented by the Republic merely tended to establish its claim of ownership over the subject properties, which are improper in a reconstitution proceeding and should be threshed out in a separate proceeding.[35]

Dissatisfied, the Republic appealed[36] to the CA.

The CA Ruling

In a Decision[37] dated May 15, 2013, the CA reversed and set aside the RTC ruling and, instead, dismissed Luriz's reconstitution petition.[38] It found that the sale in Luriz's favor was *simulated* or *fictitious* considering: (*a*) his admissions that he was not aware of such sale until sometime in 1996 when his mother-in-law handed him the documents pertaining thereto, and that he did not pay the consideration therefor; and (*b*) the absence of his signature on the deed of sale. Since the document where Luriz anchors his claim is void, he does not have any interest in the properties in question and has no legal standing to seek reconstitution.[39]

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[31] *Id.* at 33-55.

[32] *Id.* at 55.

[33] See *id.* at 47.

[34] See *id.* at 52.

[35] See *id.* at 48-49.

[36] See Notice of Appeal dated January 12, 2010; records, Vol. 2, pp. 1098-1100.

[37] *Rollo*, pp. 57-68.

[38] *Id.* at 68.

[39] See *id.* at 63-67.

Unperturbed, Luriz moved for reconsideration,[40] which was denied in a Resolution[41] dated August 30, 2013; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in dismissing the petition for reconstitution.

The Court's Ruling

The petition lacks merit.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. It partakes of a land registration proceeding. Thus, it must be granted only upon **clear proof that the title sought to be restored was indeed issued to the petitioner or his predecessor-in-interest, and such title was in force at the time it was lost or destroyed**.[42]

In the present case, the reconstitution petition is anchored on a purported owner's duplicate copy of TCT No. 1297 — a source for reconstitution of title under Section 3 (a)[43] of Republic Act No. (RA) 26.[44] Based on the provisions of the said law, the following must be present for an order of reconstitution to issue: (*a*) the certificate of title had been lost or destroyed; (*b*) the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title;

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[40] See motion for reconsideration dated June 6, 2013; CA *rollo*, pp. 295-302.

[41] *Rollo*, pp. 70-71.

[42] See *Republic v. Santua,* 586 Phil. 291, 297-298 (2008).

[43] Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

x x x   x x x   x x x

[44] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED," approved on September 25, 1946.

(*c*) the petitioner is the registered owner of the property or had an interest therein; (*d*) the certificate of title was in force at the time it was lost and destroyed; and (*e*) the description, area, and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.[45] Particularly, when the reconstitution is based on an extant owner's duplicate TCT, **the main concern is the authenticity and genuineness of the certificate**.[46]

Tested against the foregoing, the Court finds that **Luriz was not able to prove that TCT No. 1297 sought to be reconstituted**

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[45] *Heirs of Enrique Toring v. Heirs of Teodosia Boquilaga*, 645 Phil. 518, 534 (2010). See also Section 12 of RA 26 which provides:

> SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2 (c), 2 (d), 2 (e), 2 (f), 3 (c), 3 (d), 3 (e), and/or 3 (f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owners duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2 (f) or 3 (f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

[46] *Angat v. Republic*, 609 Phil. 146, 171 (2009), citing *Puzon v. Sta. Lucia Realty and Development, Inc*., 406 Phil. 263 (2001).

was authentic, genuine, and in force at the time it was lost and destroyed.

At the forefront of this pronouncement is Vesting Order No. P-89[47] dated April 9, 1947, which was promulgated pursuant to the provisions of the Trading with the Enemy Act [48] of the US, as amended (Trading with the Enemy Act), the Philippine Property Act of 1946,[49] and Executive Order No. 9818,[50] with the document entitled "Exhibit A,"[51] which seized or vested the subject properties "to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the [US]"[52] in accordance with the foregoing Acts.[53]

To recall, after the liberation of the Philippines during World War II, properties belonging to Japanese nationals located in this country were taken possession of by the Alien Property Custodian appointed by the President of the US under the Trading with the Enemy Act. Although the Philippines was not a territory or within the jurisdiction or national domain of the US, it was then occupied by the US military and naval forces.[54] The

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[47] *Rollo*, pp. 195-196.

[48] Enacted on October 6, 1917.

[49] Public Law 485 — 79th US Congress, entitled "AN ACT TO PROVIDE FOR THE RETENTION BY THE UNITED STATES GOVERNMENT OR ITS AGENCIES OR INSTRUMENTALITIES OF REAL AND PERSONAL PROPERTY WITHIN THE PHILIPPINES NOW OWNED OR LATER ACQUIRED AND FOR THE ADMINISTRATION OF THE TRADING WITH THE ENEMY ACT OF OCTOBER 16, 1917, AS AMENDED, IN THE PHILIPPINES, SUBSEQUENT TO INDEPENDENCE," approved on July 3, 1946.

[50] Entitled "ESTABLISHING THE PHILIPPINE ALIEN PROPERTY ADMINISTRATION AND DEFINING ITS FUNCTIONS," issued by US President Harry S. Truman on January 7, 1947.

[51] *Rollo*, p. 197. Vesting Order No. P-89 and Exhibit A were published in the Official Gazette, Vol. 43, pp. 1390-1391 (April 1947).

[52] *Id.* at 196.

[53] See *id.*

[54] See *Haw Pia v. China Banking Corporation*, 80 Phil. 604, 625 (1948).

application of the Trading with the Enemy Act was extended to the Philippines by mutual agreement of the two Governments, while the operation of the Philippine Property Act of 1946 was based on the express provision of the said act, and on the tacit consent thereto and the conduct of the Philippine Government in receiving the benefits of its provisions.[55] The extraterritorial effect of the said foreign statutes to the Philippines was expressly recognized in *Brownell, Jr. v. Sun Life Assurance Company*[56] where the Court ruled:

> [W]hen the proclamation of the independence of the Philippines by President Truman was made, said independence was granted "in accordance with and subject to the reservations provided in the applicable statutes of the United States." The enforcement of the Trading with the Enemy Act of the United States was contemplated to be made applicable after independence, within the meaning of the reservations.
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> On the part of the Philippines, conformity to the enactment of the Philippine Property Act of 1946 of the United States was announced by President Manuel Roxas in a joint statement signed by him and by Commissioner McNutt. Ambassador Romulo also formally expressed the conformity of the Philippine Government to the approval of said act to the American Senate prior to its approval. And after the grant of independence, the Congress of the Philippines approved Republic Act No. 8, entitled
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> AN ACT TO AUTHORIZE THE PRESIDENT OF THE PHILIPPINES TO ENTER INTO SUCH CONTRACT OR UNDERTAKINGS AS MAY BE NECESSARY TO EFFECTUATE THE TRANSFER TO THE REPUBLIC OF THE PHILIPPINES UNDER THE PHILIPPINE PROPERTY ACT OF NINETEEN HUNDRED AND FORTY-SIX OF ANY PROPERTY OR PROPERTY RIGHTS OR THE PROCEEDS THEREOF AUTHORIZED TO BE TRANSFERRED UNDER SAID ACT; PROVIDING FOR THE ADMINISTRATION AND DISPOSITION OF SUCH PROPERTIES ONCE RECEIVED; AND APPROPRIATING THE NECESSARY FUND THEREFOR.

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[55] See *Brownell, Jr. v. Sun Life Assurance Company*, 95 Phil. 228, 236 (1954).

[56] *Id.*

The Congress of the Philippines also approved Republic Act No. 7, which established a Foreign Funds Control Office. After the approval of the Philippine Property Act of 1946 of the United States, the Philippine Government also formally expressed, through the Secretary of Foreign Affairs, conformity thereto. (See letters of Secretary dated August 22, 1946, and June 3, 1947.) The Congress of the Philippines has also approved Republic Act No. 477, which provides for the administration and disposition of properties which have been or may hereafter be transferred to the Republic of the Philippines in accordance with the Philippine Property Act of 1946 of the United States.

It is evident, therefore, that the consent of the Philippine Government to the application of the Philippine Property Act of 1946 to the Philippines after independence was given, not only by the Executive Department of the Philippine Government, but also by the Congress, which enacted the laws that would implement or carry out the benefits accruing from the operation of the United States law. x x x.[57] (Emphasis supplied)

Being an official record of a duty especially enjoined by laws in force in the Philippines at the time it was issued,[58] Vesting Order No. P-89 is, therefore, *prima facie* evidence of the facts stated therein.[59]

Vesting Order No. P-89 dated April 9, 1947 stated that, after proper investigation, the Philippine Alien Property Administration had found that the properties particularly described in **Exhibit A**, *i.e.*, the Transcript of TCT No. 1297; B[oo]k T-9 P[age] 47, were owned or controlled by "nationals of a designated enemy country (Japan)."[60] **Exhibit A** identified the vested properties as:

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[57] *Id.* at 232-233.

[58] Namely, the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946. The said laws which were passed by the US Congress continued to be in force even after the Philippines was given independence on July 4, 1946. (See *Brownell, Jr. v. Bautista,* 95 Phil. 853, 862-863 [1954], citing *Brownell, Jr. v. Sun Life Assurance Company, id.*)

[59] See *Dimaguila v. Monteiro*, G.R. No. 201011, January 27, 2014, 714 SCRA 565, 582.

[60] See *rollo*, pp. 195 and 197.

(a) covered by **TCT No. 1297** issued by the RD-QC on **July 19, 1941**, and may be found in **B**[oo]**k T-9 P**[age]**47** of the registration book;

(b) situated in QC, and bounded and described as follows:

"(1) Lot No. 8, Block No. 260, subdivision, Psd-18527, portion of Lot No. 4-B-3-C-2A-1, described in subdivision Plan Psd-18526, GLRO Record No. 7681

NE – Lot No. 10, Block No. 260)
SE – Lot No. 9, Block No. 260)
SW – Lot No. 6, Block No. 260) AREA: **1578.8**
NW – Street Lot No. 31) square meters

(2) Lot No. 10, Block No. 260, etc. (see above)
NE – Lot No. 12, Block No. 260)
SE – Lot No. 11, Block No. 260)
SW – Lot No. 8, Block No. 260) AREA: **1454.7**
NW – Street Lot No. 31) square meters"[61]

(c) registered in accordance with the provisions of the Land Registration Act in the name of: "**YOICHIRO URAKAMI,** Japanese, married to Hisako Urakami."[62]

(d) "originally registered on 8th July 1914 in the Register Book of [the RD-QC], Vol. A-7, Page 136, as O.C.T #735, pursuant to Decree #17431, issued in G.L.R.O. ___________, Record #7681."[63]

The legal effect of a vesting order was to effectuate immediately the transfer of title to the US by operation of law, without any necessity for any court action, and as completely as if by conveyance, transfer, or assignment,[64] **thereby completely divesting the former owner of every right with respect to the vested property**.[65] It is worthy to note

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[61] *Id.* at 197.

[62] *Id.*

[63] See *id.*

[64] See *Republic v. Guanzon*, 158 Phil. 1000, 1003 (1974); citations omitted.

[65] Lino M. Patajo, *Application of the Trading with the Enemy Act in the Philippines, 26 PHILIPPINE LAW JOURNAL* 305, 331-333 (1951).

that under Section 39 (a)[66] of the Trading with the Enemy Act, properties of Japanese nationals vested after December 17, 1941 shall not be returned to their owners, and the US shall not pay compensation therefor. **Instead, the vested properties were to be conveyed to the Republic as part of its over-all plan of rehabilitation**.[67]

Nonetheless, to safeguard the rights of citizens and friendly aliens — *i.e.*, persons who are **not** enemies or allies of enemies — claiming any interest, right, or title to the vested properties, the Trading with the Enemy Act, both in its original and amendatory provisions, permits the filing of suits for the recovery of any property vested or seized[68] **on or after**

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[66] **§39. Retention of properties or interests of Germany and Japan and their nationals; proceeds covered into Treasury; *ex gratia* payment to Switzerland**

(a) No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of Sections 32, 40, 41, 42 or 43 of this Act or of the Philippine Property Act of 1946.

x x x x x x x x x

(Underscoring supplied)

[67] Lino M. Patajo, *Application of the Trading with the Enemy Act in the Philippines*, *26 PHILIPPINE LAW JOURNAL* 305, 333 (1951), citing 3 Hyde, *International Law*, pp. 1736-1737.

[68] Lino M. Patajo, *Application of the Trading with the Enemy Act in the Philippines*, *26 PHILIPPINE LAW JOURNAL* 305, 334 (1951). Such suits shall be filed pursuant to Section 9 (a) of the said Act, which reads:

§9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover; sale of claimed property in time of war or during national emergency

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed,

December 18, 1941, until April 30, 1949 or after the expiration

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transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated: *Provided further*, That upon a determination made by the President, in time of war or during any national emergency declared by the President, that the interest and welfare of the United States require the sale of any property or interest or any part thereof claimed in any suit filed under this subsection and pending on or after the date of enactment of this proviso the Alien Property Custodian or any successor officer, or agency may sell such property or interest or part thereof, in conformity with law

of two (2) years from the date of vesting, whichever is later.[69]

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applicable to sales of property by him, at any time prior to the entry of final judgment in such suit. No such sale shall be made until thirty days have passed after the publication of notice in the Federal Register of the intention to sell. The net proceeds of any such sale shall be deposited in a special account established in the Treasury, and shall be held in trust by the Secretary of the Treasury pending the entry of final judgment in such suit. Any recovery of any claimant in any such suit in respect of the property or interest or part thereof so sold shall be satisfied from the net proceeds of such sale unless such claimant, within sixty days after receipt of notice of the amount of net proceeds of sale serves upon the Alien Property Custodian, or any successor officer or agency, and files with the court an election to waive all claims to the net proceeds, or any part thereof, and to claim just compensation instead. If the court finds that the claimant has established an interest, right, or title in any property in respect of which such an election has been served and filed, it shall proceed to determine the amount which will constitute just compensation for such interest, right, or title, and shall order payment to the claimant of the amount so determined. An order for the payment of just compensation hereunder shall be a judgment against the United States and shall be payable first from the net proceeds of the sale in an amount not to exceed the amount the claimant would have received had he elected to accept his proportionate part of the net proceeds of the sale, and the balance, if any, shall be payable in the same manner as are judgments in cases arising under Section 1346 of title 28, United States Code. The Alien Property Custodian or any successor officer or agency shall, immediately upon the entry of final judgment, notify the Secretary of the Treasury of the determination by final judgment of the claimant's interest and right to the proportionate part of the net proceeds from the sale, and the final determination by judgment of the amount of just compensation in the event the claimant has elected to recover just compensation for the interest in the property he claimed.

x x x x x x x x x

(Underscoring supplied)

[69] Lino M. Patajo, *Application of the Trading with the Enemy Act in the Philippines, 26 PHILIPPINE LAW JOURNAL* 305, 336-337 (1951). See also Section 33 of the same Act which reads:

§33. **Notice of Claim; institution of suits; computation of time.**

No return may be made pursuant to Section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from February 9, 1954, or two years from the vesting of the property

With the foregoing in mind, it is clear that after the execution of Vesting Order No. P-89 on April 9, 1947, the registered owner, **Yoichiro Urakami,** was divested of any title or interest in the vested properties[70] registered in his name under **TCT No. 1297**, which was thereby rendered **of no force and effect at the time it was lost or destroyed, *i.e.*, on June 1988 and, thus, cannot be reconstituted**. In addition, the records are bereft of showing that any citizen or friendly alien made any claim to the vested properties under Vesting Order No. P-89 within the prescriptive period ending April 30, 1949. Accordingly, the vested properties were transferred by the Attorney General of the US[71] to the Republic under Transfer Agreement[72] dated May 7, 1953,

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> or interest in respect of which the claim is made, whichever is later. No suit pursuant to Section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to Section 9 or 32 (a) hereof. (Underscoring supplied)

[70] See *Reyes v. Pecson*, 86 Phil. 181, 189 (1950), wherein the Court elucidated the effect of the vesting of a property, thus:

> The Philippine Alien Property Administrator was not a debtor of Teizo Mori, because the latter had been divested of any title or interest in the properties formerly owned by him and registered in his name after the vesting order No. P-7 had been executed, and because the said properties after the vesting order No. P-7 had been executed, and after they had been sold, the proceeds realized from the sale thereof, belonged to the Government of the United States of America.

[71] Under Executive Order 10254, entitled "TERMINATING THE PHILIPPINE ALIEN PROPERTY ADMINISTRATION AND TRANSFERRING ITS FUNCTIONS TO THE DEPARTMENT OF JUSTICE," issued by US President Harry S. Truman on June 15, 1951, the Philippine Alien Property Administration was terminated, and all authority, rights, privileges, powers, duties, functions, as well as all property or interests vested in or transferred to such Administration or the Administrator thereof, were vested in or transferred or delegated to the Attorney General, to be administered by him or under his direction and control by such officers and agencies of the Department of Justice as he may designate.

[72] *Rollo*, pp. 198-202.

and thereafter became the subject of two (2) Presidential Proclamations, namely: (*a*) Proclamation No. 438[73] issued by then President Elpidio R. Quirino on December 23, 1953, reserving them for dormitory site purposes of the North General Hospital; and (*b*) Proclamation No. 732[74] issued by then President Carlos P. Garcia on February 28, 1961, reserving them, instead, for dormitory site purposes of the National Orthopedic Hospital, now POC, which is presently in possession thereof.

Furthermore, doubt was cast on the **authenticity and genuineness of the questioned certificate** because save for the TCT number, the metes and bounds, and the OCT details, all the other details of the properties (*i.e.*, [*a*] the registered owner, [*b*] the respective areas of the subject lots, and [*c*] the details of the entry in the registration book, such as the book and page number where entered, as well as the date of entry) are materially different from the recitals in Exhibit A of Vesting Order No. P-89. The evidentiary value of the said order and the corresponding exhibit duly published in the Official Gazette which, as mentioned, are official records of a duty especially enjoined by laws in force at the time of its issuance, must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity,[75] and must prevail over the questioned certificate.

Notably, these findings should not be taken as an adjudication on the ownership of the subject lands. As priorly intimated, they are but determinations of whether or not the certificate of title sought to be reconstituted is authentic, genuine, and in force and effect at the time it was lost or destroyed, which, based on case law, are central to resolving petitions for reconstitution of title. Clearly, a reconstitution of title proceeding involves only the re-issuance of a new certificate of title lost or destroyed in its original form and condition. In this light, the court does not pass upon the ownership of the land covered by

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[73] *Id.* at 223-224.

[74] *Id.* at 222.

[75] *Palileo v. National Irrigation Administration*, 509 Phil. 273, 282 (2005).

the lost or destroyed certificate, as the said matter should be threshed out in a separate proceeding for the purpose.[76]

Thus, for all these reasons, the reconstitution petition should have already been denied. With this, it was therefore unnecessary for the CA to have determined the validity or invalidity of the January 31, 1975 deed of sale in favor of Luriz, specifically, with respect to the issue of whether or not the sale was simulated or fictitious.

WHEREFORE, the petition is **DENIED**. The Decision dated May 15, 2013 and the Resolution dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 95148 dismissing the petition for reconstitution filed by petitioner Jose B. Luriz are hereby **AFFIRMED** for the afore-discussed reasons.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 209180. February 24, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **REGHIS M. ROMERO II and OLIVIA LAGMAN ROMERO,** *respondents.*

[G.R. No. 209253. February 24, 2016]

OLIVIA LAGMAN ROMERO, *petitioner, vs.* **REGHIS M. ROMERO II,** *respondent.*

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[76] See *Sps. Layos v. Fil-Estate Golf and Dev't., Inc.*, 583 Phil. 72, 115-116 (2008).

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; MARRIAGE; PSYCHOLOGICAL INCAPACITY AS A GROUND TO NULLIFY MARRIAGE; EXPLAINED.—** The policy of the Constitution is to protect and strengthen the family as the basic autonomous social institution, and marriage as the foundation of the family. As such, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. Thus, it has consistently been held that psychological incapacity, as a ground to nullify a marriage under Article 36 of the Family Code, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. It must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. In *Republic v. CA*, the Court laid down definitive guidelines on the interpretation and application of Article 36 of the Family Code. Among others, it clarified that the illness must be grave enough to bring about the incapacity or inability of the party to assume the essential obligations of marriage such that "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage. x x x Indeed, the standards used by the Court in assessing the sufficiency of psychological evaluation reports may be deemed very strict, but these are proper, in view of the principle that any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital tie. After all, marriage is an inviolable institution protected by the State. Accordingly, it cannot be dissolved at the whim of the parties, especially where the pieces of evidence presented are grossly deficient to show the juridical antecedence, gravity and incurability of the condition of the party alleged to be psychologically incapacitated to assume and perform the essential marital duties.

2. ID.; ID.; ID.; ID.; CONDITIONS REQUIRED.— Verily, all people may have certain quirks and idiosyncrasies, or isolated traits associated with certain personality disorders and there is hardly any doubt that the intention of the law has been to confine the meaning of psychological incapacity to the most serious cases. Thus, to warrant the declaration of nullity of marriage, the psychological incapacity must: (*a*) be grave or serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) have juridical antecedence, *i.e*., it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (*c*) be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved. Article 36 of the Family Code must not be confused with a divorce law that cuts the marital bond at the time the grounds for divorce manifest themselves; rather, it must be limited to cases where there is a downright incapacity or inability to assume and fulfill the basic marital obligations, not a mere refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse. Thus, absent sufficient evidence to prove psychological incapacity within the context of Article 36 of the Family Code, the Court is compelled to uphold the indissolubility of the marital tie.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner Republic of the Philippines.
The Law Firm of Dupaya & Dupaya for respondent Reghis M. Romero II.

D E C I S I O N

PERLAS-BERNABE, *J*.:

Before the Court are consolidated petitions[1] for review on *certiorari* assailing the Decision[2] dated March 21, 2013 and

[1] *Rollo* (G.R. No. 209180), pp. 9-27; *rollo* (G.R. No. 209253), pp. 5-41.

[2] *Rollo* (G.R. No. 209180), pp. 31-38; *rollo* (G.R. No. 209253), pp. 42-49. Penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting concurring.

the Resolution[3] dated September 12, 2013 of the Court of Appeals in CA-G.R. CV No. 94337, which affirmed the Decision[4] dated November 5, 2008 of the Regional Trial Court (RTC) of Quezon City, Branch 225 (RTC Branch 225) in Civil Case No. Q-98-34627 declaring the marriage of Reghis M. Romero II (Reghis) and Olivia Lagman Romero (Olivia) null and void *ab initio* on the ground of psychological incapacity pursuant to Article 36[5] of the Family Code of the Philippines (Family Code), as amended.

The Facts

Reghis and Olivia were married[6] on May 11, 1972 at the Mary the Queen Parish in San Juan City and were blessed with two (2) children, namely, Michael and Nathaniel, born in 1973 and 1975,[7] respectively. The couple first met in Baguio City in 1971 when Reghis helped Olivia and her family who were stranded along Kennon Road. Since then, Reghis developed a closeness with Olivia's family, especially with the latter's parents who tried to play matchmakers for Reghis and Olivia. In the desire to please Olivia's parents, Reghis courted Olivia and, eventually, they became sweethearts.[8]

Reghis was still a student at the time, determined to finish his studies and provide for the financial needs of his siblings and parents. Thus, less than a year into their relationship, Reghis tried to break-up with Olivia because he felt that her demanding

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[3] *Rollo* (G.R. No. 209180), pp. 40-41; *rollo* (G.R. No. 209253), pp. 50-51.

[4] *Rollo* (G.R. No. 209253), pp. 76-87. Penned by Presiding Judge Maria Elisa Sempio Diy.

[5] Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[6] See Marriage Contract; *rollo* (G.R. No. 209253), p. 66.

[7] "1976" in the CA Decision. See *Rollo* (G.R. No. 209180), p. 31; *rollo* (G.R. No. 209253), p. 42.

[8] See *rollo* (G.R. No. 209180), pp. 10-11 and 31-32; *rollo* (G.R. No. 209253), pp. 42-43.

attitude would prevent him from reaching his personal and family goals. Olivia, however, refused to end their relationship and insisted on staying with Reghis at the latter's dormitory overnight. Reghis declined and, instead, made arrangements with his friends so that Olivia could sleep in a female dormitory. The next day, Reghis brought Olivia home and while nothing happened between them the previous night, Olivia's parents believed that they had eloped and planned for them to get married. Reghis initially objected to the planned marriage as he was unemployed and still unprepared. However, Olivia's parents assured him that they would shoulder all expenses and would support them until they are financially able. As Olivia's parents had treated him with nothing but kindness, Reghis agreed.[9]

The couple experienced a turbulent and tumultuous marriage, often having violent fights and jealous fits. Reghis could not forgive Olivia for dragging him into marriage and resented her condescending attitude towards him. They became even more estranged when Reghis secured a job as a medical representative and became engrossed in his career and focused on supporting his parents and siblings. As a result, he spent little time with his family, causing Olivia to complain that Reghis failed to be a real husband to her. In 1986, the couple parted ways.[10]

On June 16, 1998, Reghis filed a petition for declaration of nullity of marriage[11] before the RTC of Quezon City, Branch 94,[12] docketed as Civil Case No. Q-98-34627, citing his psychological

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[9] See *rollo* (G.R. No. 209180), p. 32; *rollo* (G.R. No. 209253), pp. 43 and 77.

[10] See *Rollo* (G.R. No. 209180), pp. 32-33; *rollo* (G.R. No. 209253), pp. 43-44 and 77-78.

[11] *Rollo* (G.R. No. 209253), pp. 52-65.

[12] The petition for declaration of nullity of marriage was re-raffled to Branch 107 of the same RTC upon Motion for Inhibition filed by Olivia, which was granted in a Resolution dated January 4, 2005. However, upon Motion for Inhibition filed by Reghis, which was granted on January 4, 2005, the petition was again re-raffled to RTC Branch 225 on May 30, 2005. (See *id.* at 76.)

incapacity to comply with his essential marital obligations.[13] In support of his petition, Reghis testified that he married Olivia not out of love but out of the desire to please the latter's parents who were kind and accommodating to him. Reghis further maintained that he was not prepared to comply with the essential marital obligations at the time, as his mind was geared towards finishing his studies and finding employment to support his parents and siblings.[14] He also added that Olivia is in a relationship with a certain Eddie Garcia (Mr. Garcia) but he (Reghis) has no ill-feelings towards Mr. Garcia, as he and Olivia have been separated for a long time.[15]

Reghis also presented Dr. Valentina Nicdao-Basilio (Dr. Basilio), a clinical psychologist, who submitted a Psychological Evaluation Report[16] dated April 28, 1998 and testified that Reghis suffered from Obsessive Compulsive Personality Disorder (OCPD).[17] According to Dr. Basilio, Reghis' behavioral disorder gave him a strong obsession for whatever endeavour he chooses, such as his work, to the exclusion of other responsibilities and duties such as those pertaining to his roles as father and husband. Dr. Basilio surmised that Reghis' OCPD was the root of the couple's disagreements and that the same is incurable, explaining too that Reghis was an unwilling groom as marriage was farthest from his mind at the time and, as such, felt cheated into marriage.[18]

For her part,[19] Olivia maintained that she and Reghis were capacitated to discharge the essential marital obligations before, at the time, and after the celebration of their marriage. She also averred that the petition is barred by *res judicata* inasmuch

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[13] *Id.* at 63.

[14] *Id.* at 55-57, 77, and 80-81.

[15] See *id.* at 79.

[16] *Id.* at 67-68.

[17] See *id.* at 68 and 81-82.

[18] See *id.*

[19] See Answer with Compulsory Counter-Claim dated August 22, 1998; *id.* at 70-73A.

as Reghis had previously filed petitions for the declaration of the nullity of their marriage on the ground the she is allegedly psychologically incapacitated, but said petitions were dismissed.[20] Olivia, however, was unable to present evidence due to the absence of her counsel which was considered by the RTC as waiver of her right to present evidence.[21]

The Office of the Solicitor General (OSG), representing the Republic of the Philippines (Republic), opposed the petition.[22]

The RTC Ruling

In a Decision[23] dated November 5, 2008, the RTC granted the petition and declared the marriage between Reghis and Olivia null and void *ab initio* on the ground of psychological incapacity.[24] It relied on the findings and testimony of Dr. Basilio, holding that Reghis suffered from a disorder that rendered him unable to perform the obligations of love, respect and fidelity towards Olivia as it gave him a strong obsession to succeed in his career, to the exclusion of his responsibilities as a father and husband. It also concurred with Dr. Basilio's observation that Reghis is still deeply attached to his parents and siblings such that he pursues his business ventures for their benefit. Likewise, it agreed that Reghis' behavioral disorder existed even before his marriage or even his adolescent years and that the same is incurable.[25]

Anent the issue of *res judicata*, the RTC remarked that there is no identity of causes of action between the petitions previously filed, which ascribed psychological incapacity on Olivia's part, and the present case which is brought on the ground of Reghis' own psychological incapacity.[26]

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[20] See *id.* at 72 and 78.

[21] *Id.* at 84.

[22] Opposition not attached to the *rollo*s. See *id.* at 76 and 80.

[23] *Id.* at 76-87.

[24] See *id.* at 86-87.

[25] See *id.* at 85-86.

[26] See *id.* at 86.

The Republic and Olivia moved for reconsideration,[27] which was, however, denied by the RTC in a Resolution[28] dated July 3, 2009. Undaunted, both appealed[29] to the CA.[30]

The CA Ruling

In a Decision[31] dated March 21, 2013, the CA affirmed the findings of the RTC, holding that the OCPD from which Reghis suffered made him yearn for professional advancement and rendered him obligated to support his parents and siblings, at the expense of his marital and filial duties. It ruled that Reghis' condition amounts to psychological incapacity within the contemplation of Article 36 of the Family Code as it is permanent in nature and incurable. It observed that Reghis' OCPD started early in his psychological development and is now so deeply ingrained in his structure and, thus, incurable because people who suffer from it are of the belief that nothing is wrong with them. It further concluded that Reghis' condition is severe considering that it interrupted and interfered with his normal functioning and rendered him unable to assume the essential marital obligations.

The Republic's and Olivia's respective motions for reconsideration[32] were denied by the CA in a Resolution[33] dated September 12, 2013.

The Proceedings Before the Court

On November 19, 2013, the Republic filed a petition for review on *certiorari*[34] before this Court, docketed as G.R. No. 209180,

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[27] Not attached to the *rollo*s.

[28] Not attached to the *rollo*s.

[29] Not attached to *rollo*s.

[30] See *rollo* (G.R. No. 209180), pp. 14 and 31; *rollo* (G.R. No. 209253), p. 42.

[31] *Rollo* (G.R. No. 209180), pp. 31-38; *rollo* (G.R. No. 209253), pp. 42-49.

[32] Not attached to the *rollo*s.

[33] *Rollo* (G.R. No. 209180), pp. 40-41; *rollo* (G.R. No. 209253), pp. 50-51.

[34] *Rollo* (G.R. No. 209180), pp. 9-27.

where it maintained that Reghis has not established that his alleged psychological incapacity is grave, has juridical antecedence, and is incurable. It averred that the psychological report prepared and submitted by Dr. Basilio has no factual basis to support the conclusions found therein as she failed to describe in detail the "pattern of behavior" showing that Reghis indeed suffered from OCPD. The Republic also claimed that the methodology employed in evaluating Reghis' condition is not comprehensive enough[35] and that based on Reghis' own testimony, he was able to perform his marital obligations as he lived together with Olivia for years and attended to his duties to their children.[36] It pointed out that Reghis' condition was not shown to have existed before their marriage and that the same is incurable.[37]

On November 13, 2013, a separate petition for review on certiorari,[38] docketed as G.R. No. 209253 was filed by Olivia. Like the Republic, she pointed out that Reghis himself admitted knowing his marital obligations as husband to Olivia and father to their children.[39] Olivia added that if Reghis indeed felt that he was being forced into the marriage, he could have simply abandoned her then or refused to take his vows on their wedding day.[40]

In a Resolution[41] dated February 17, 2014, the Court consolidated the present petitions.

The Issue Before the Court

The lone issue for the Court's resolution is whether or not the CA erred in sustaining the RTC's declaration of nullity on the ground of psychological incapacity.

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[35] See *id.* at 19.

[36] See *id.* at 21.

[37] See *id.* at 21-22.

[38] *Rollo*, (G.R. No. 209253), pp. 5-41.

[39] See *id.* at 12-14.

[40] See *id.* at 21.

[41] *Rollo* (G.R. No. 209180), p. 46; *rollo* (G.R. No. 209253), p. 53.

The Court's Ruling

The Court finds merit in the petitions.

The policy of the Constitution is to protect and strengthen the family as the basic autonomous social institution, and marriage as the foundation of the family. As such, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties.[42] Thus, it has consistently been held that psychological incapacity, as a ground to nullify a marriage under Article 36 of the Family Code, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[43] It must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.[44]

Verily, all people may have certain quirks and idiosyncrasies, or isolated traits associated with certain personality disorders and there is hardly any doubt that the intention of the law has been to confine the meaning of psychological incapacity to the most serious cases.[45] Thus, to warrant the declaration of nullity of marriage, the psychological incapacity must: (a) be grave or serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) have juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[46]

In *Republic v. CA*,[47] the Court laid down definitive guidelines on the interpretation and application of Article 36 of the Family

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[42] *Navales v. Navales*, 578 Phil. 826, 838 (2008).

[43] See *Santos v. CA*, 310 Phil. 21, 39-40 (1995).

[44] *Navales v. Navales, supra* note 42, at 840.

[45] *Id.*

[46] *Santos v. CA, supra* note 43, at 39.

[47] 335 Phil. 664 (1997).

Code. Among others, it clarified that the illness must be grave enough to bring about the incapacity or inability of the party to assume the essential obligations of marriage such that "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.[48]

After a thorough review of the records of this case, the Court finds that the foregoing requirements do not concur. As aptly pointed out by the petitioners, Reghis' testimony shows that he was able to comply with his marital obligations which, therefore, negates the existence of a grave and serious psychological incapacity on his part. Reghis admitted that he and Olivia lived together as husband and wife under one roof for fourteen (14) years and both of them contributed in purchasing their own house in Parañaque City. Reghis also fulfilled his duty to support and take care of his family, as he categorically stated that he loves their children and that he was a good provider to them.[49] That he married Olivia not out of love, but out of reverence for the latter's parents, does not mean that Reghis is psychologically incapacitated in the context of Article 36 of the Family Code. In *Republic v. Albios*,[50] the Court held that:

Motives for entering into a marriage are varied and complex. The State does not and cannot dictate on the kind of life that a couple chooses to lead. Any attempt to regulate their lifestyle would go into the realm of their right to privacy and would raise serious constitutional questions. The right to marital privacy allows married couples to structure their marriages in almost any way they see fit, to live together or live apart, to have children or no children, to

[48] *Id.* at 678.

[49] See *rollo* (G.R. No. 209253), pp. 79-80.

[50] G.R. No. 198780, October 16, 2013, 707 SCRA 584.

love one another or not, and so on. **Thus, marriages entered into for other purposes, limited or otherwise, such as convenience, companionship, money, status, and title, provided that they comply with all the legal requisites, are equally valid. Love, though the ideal consideration in a marriage contract, is not the only valid cause for marriage**. Other considerations, not precluded by law, may validly support a marriage.[51] (Emphasis supplied)

Moreover, the OCPD which Reghis allegedly suffered from was not shown to have juridical antecedence. Other than Dr. Basilio's conclusion that Reghis' "behavioral disorder x x x existed even prior to the marriage or even during his adolescent years,"[52] no specific behavior or habits during his adolescent years were shown which would explain his behavior during his marriage with Olivia. Simply put, Dr. Basilio's medical report did not establish that Reghis' incapacity existed long before he entered into marriage.

In like manner, Dr. Basilio simply concluded that Reghis' disorder is incurable but failed to explain how she came to such conclusion. Based on the appreciation of the RTC, Dr. Basilio did not discuss the concept of OCPD, its classification, cause, symptoms, and cure, and failed to show how and to what extent the respondent exhibited this disorder in order to create a necessary inference that Reghis' condition had no definite treatment or is incurable. To the Court's mind, this is a glaring deficiency that should have prompted the RTC and the CA to be more circumspect and critical in the assessment and appreciation of Dr. Basilio's testimony.

Indeed, the standards used by the Court in assessing the sufficiency of psychological evaluation reports may be deemed very strict, but these are proper, in view of the principle that any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital tie.[53] After all,

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[51] *Id.* at 598-599.

[52] *Rollo* (G.R. No. 209253), p. 82.

[53] *Agraviador v. Amparo-Agraviador*, 652 Phil. 49, 69 (2010).

marriage is an inviolable institution protected by the State. Accordingly, it cannot be dissolved at the whim of the parties, especially where the pieces of evidence presented are grossly deficient to show the juridical antecedence, gravity and incurability of the condition of the party alleged to be psychologically incapacitated to assume and perform the essential marital duties.[54]

The Court is not unaware of the rule that factual findings of trial courts, when affirmed by the CA, are binding on this Court. However, this principle does not apply when such findings go beyond the issues of the case; run contrary to the admissions of the parties; fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts,[55] such as in the case at bar.

The Court can only commiserate with the parties' plight as their marriage may have failed. It must be reiterated, however, that the remedy is not always to have it declared void *ab initio* on the ground of psychological incapacity.[56] Article 36 of the Family Code must not be confused with a divorce law that cuts the marital bond at the time the grounds for divorce manifest themselves;[57] rather, it must be limited to cases where there is a downright incapacity or inability to assume and fulfill the basic marital obligations, not a mere refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse.[58] Thus, absent sufficient evidence to prove psychological incapacity within the context of Article 36 of the Family Code, the Court is compelled to uphold the indissolubility of the marital tie.[59]

WHEREFORE, the petitions are **GRANTED**. The Decision dated March 21, 2013 and the Resolution dated September 12, 2013

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[54] *Id.*

[55] *Navales v. Navales, supra* note 42, at 840.

[56] *Id.*

[57] *Perez-Ferraris v. Ferraris*, 527 Phil. 722, 732-733 (2006).

[58] See *Republic v. CA, supra* note 47, at 678.

[59] See *Navales v. Navales, supra* note 42, at 846.

of the Court of Appeals in CA-G.R. CV No. 94337 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the petition for declaration of nullity of marriage filed under Article 36 of the Family Code of the Philippines, as amended, is **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 210542. February 24, 2016]

ROSALINA CARODAN, *petitioner, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; LOAN; ACCOMMODATION MORTGAGE, SUSTAINED; PRESENT IN CASE AT BAR.—** Loan transactions in banking institutions usually entail the execution of loan documents, typically a promissory note, covered by a real estate mortgage and/or a surety agreement. In the instant case, petitioner Rosalina admitted that she was a party to these loan documents although she vehemently insisted that she had received nothing from the proceeds of the loan. Meanwhile, respondent bank offered in evidence the Promissory Note, the Real Estate Mortgage and the Surety Agreement signed by the parties. We find that Rosalina is liable as an accommodation mortgagor. In *Belo v. PNB,* we had the occasion to declare: An accommodation mortgage is not necessarily void simply because the accommodation mortgagor did not benefit from the same. The validity of an accommodation mortgage is allowed under Article 2085 of the New Civil Code which provides that (t)hird persons who are not parties to the principal obligation

may secure the latter by pledging or mortgaging their own property. An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.

2. **ID.; ID.; CONTRACT OF SURETY; DISTINGUISHED FROM CONTRACT OF GUARANTY.—** A contract of suretyship (second paragraph of Article 2047) has been juxtaposed against a contract of guaranty (first paragraph of Article 2047) as follows: A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor. A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. In other words, a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor.

3. **ID.; ID.; MORTGAGE; NATURE THEREOF, EXPLAINED. —** A mortgage is simply a security for, and not a satisfaction of indebtedness. If the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. x x x The creditor, respondent China Bank in this Petition, is therefore not precluded, from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the Real Estate Mortgage, would result in a deficiency.

APPEARANCES OF COUNSEL

Reynaldo A. Deray for petitioner.

Lim Vigilia Alcala Dumlao Alameda & Casiding for respondent.

DECISION

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] seeking to set aside the Decision[2] dated 9 July 2013 and the Resolution[3] dated 29 November 2013 rendered by the Court of Appeals (CA), Ninth Division, Manila, in CA-G.R. CV No. 95835. The CA denied petitioner's appeal assailing the Decision[4] dated 23 June 2010 issued by the Regional Trial Court (RTC) of Tuguegarao City, Branch 2, in Civil Case No. 5692.

THE ANTECEDENT FACTS

The records reveal that on 6 June 2000, China Banking Corporation (China Bank) instituted a Complaint[5] for a sum of money against Barbara Perez (Barbara), Rebecca Perez-Viloria (Rebecca), Rosalina Carodan (Rosalina) and Madeline Carodan (Madeline). China Bank claimed that on 15 January 1998, Barbara and Rebecca, for value received, executed and delivered Promissory Note No. TLS-98/007[6] to respondent bank under which they promised therein to jointly and severally pay the amount of ₱2.8 million.[7] China Bank further claimed that as security for the payment of the loan, Barbara, Rebecca and Rosalina also executed a Real Estate Mortgage[8] over a property registered in the name of Rosalina and covered by Transfer Certificate Title (TCT) No. T-10216.[9] Respondent alleged that

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[1] *Rollo*, pp. 9-23.

[2] *Id.* at 37-47; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

[3] *Id.* at 24-25.

[4] *Id.* at 49-62; penned by Judge Vilma T. Pauig.

[5] Records, pp. 1-17.

[6] *Id.* at 8-9.

[7] *Id.* at 2.

[8] *Id.* at 10-12.

[9] *Id.* at 3.

a Surety Agreement[10] in favor of China Bank as creditor was also executed by Barbara and Rebecca as principals and Rosalina and her niece Madeline as sureties. Through that agreement, the principals and sureties warranted the payment of the loan obligation amounting to ₱2.8 million including interests, penalties, costs, expenses, and attorney's fees.[11]

Barbara and Rebecca failed to pay their loan obligation despite repeated demands from China Bank. Their failure to pay prompted the bank institute extrajudicial foreclosure proceedings on the mortgaged property on 26 November 1999.[12] From the extrajudicial sale, it realized only ₱1.5 million as evidenced by a Certificate of Sale.[13] This amount, when applied to the total outstanding loan obligation of ₱1,865,345.77, would still leave a deficiency of ₱365,345.77. For that reason, the bank prayed that the court order the payment of the deficiency amount with interest at 12% per annum computed from 13 January 2000; attorney's fees equal to 10% of the deficiency amount; and litigation expenses and costs of suit.[14]

Barbara and Rebecca filed their Answer. They interposed the defense that although they both stood as principal borrowers, they had entered into an oral agreement with Madeline and Rosalina. Under that agreement which was witnessed by China Bank's loan officer and branch manager, they would equally split both the proceeds of the loan and the corresponding obligation and interest pertaining thereto, and they would secure the loan with the properties belonging to them.[15] Barbara and Rebecca used as security their real properties covered by TCT Nos. T-93177, T-93176, T-93174, T-93167, T-93169, T-93170, T-93171

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[10] *Id.* at 13-14.

[11] *Id.*

[12] *Id.* at 94-96.

[13] *Id.* at 15-16.

[14] *Id.* at 4-5.

[15] *Id.* at 29.

and T-93172; while Rosalina and Madeline used for the same purpose the former's property covered by TCT No. T-10216.[16]

Barbara and Rebecca further alleged that while Rosalina and Madeline obtained their share of ₱1.4 million of the loan amount, the latter two never complied with their obligation to pay interest. It was only Rebecca's account with China Bank that was automatically debited in the total amount of ₱1,002,735.54.[17] Barbara and Rebecca asked China Bank for the computation of their total obligation, for which they paid ₱1.5 million aside from the interest payments, and respondent bank thereafter released the Real Estate Mortgage over their properties.[18]

By way of crossclaim, Barbara and Rebecca asked Rosalina and Madeline to pay half of ₱1,002,735.54 as interest payments, as well as the deficiency amount plus 12% interest per annum and attorney's fees, the total amount of which pertained to the loan obligation of the latter two.[19] By way of counterclaim, Barbara and Rebecca also asked China Bank to pay ₱1 million as moral damages, ₱500,000 as exemplary damages, plus attorney's fees and costs of suit.[20]

China Bank filed its Reply and Answer to Counterclaim clarifying that it was suing Barbara and Rebecca as debtors under the Promissory Note and as principals in the Surety Agreement, as well as Rosalina and Madeline as sureties in the Surety Agreement.[21] It claimed that equal sharing of the proceeds of the loan was "a bat at misrepresentation" and "a self-serving prevarication," because what was clearly written on the note was that Rebecca and Barbara were the principal debtors.[22] It

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[16] *Id.* at 30.

[17] *Id.*

[18] *Id.* at 31.

[19] *Id.*

[20] *Id.* at 32.

[21] *Id.* at 35-36.

[22] *Id.* at 37.

reiterated that the two were liable for the full payment of the principal amount plus the agreed interest, charges, penalties and attorney's fees, with recourse to reimbursement from Rosalina and Madeline.[23]

China Bank also disputed the claim of Rebecca and Barbara that upon their payment to the bank of ₱1.5 million, the Real Estate Mortgage over their properties was cancelled. Their claim was disputed because, even after their payment of ₱1.5 million, Rebecca and Barbara were still indebted in the amount of ₱1.3 million exclusive of interest, charges, penalties and other legitimate fees.[24] Furthermore, respondent stated that if there was a cancellation of mortgage, it referred to other mortgages securing other separate loan obligations of Barbara and Rebecca; more particularly, that of Barbara.[25]

Rosalina filed her Answer with Counterclaim and Crossclaim.[26] She alleged that on 2 July 1997, she and Barbara executed (1) a Real Estate Mortgage covering Rosalina's lot and ancestral house, as well as Barbara's eight residential apartments, annotated as an encumbrance at the back of the TCTs corresponding to the properties as evidenced by the Annexes to the Answer; and (2) a Surety Agreement to secure the credit facility granted by the bank to Barbara and Rebecca up to the principal amount of ₱2.8 million.[27] Rosalina further stated that the execution of the contracts was "made in consideration of the long-time friendship" between Barbara and Rebecca, and Madeline, and that "no monetary or material consideration whatsoever passed between [Barbara and Rebecca], on the one hand, and [Rosalina], on the other hand."[28]

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[23] *Id.* at 38.

[24] *Id.* at 39.

[25] *Id.*

[26] *Id.* at 173-231.

[27] *Id.* at 174-175.

[28] *Id.* at 154.

Rosalina acknowledged that on 15 January 1998, Barbara and Rebecca executed a Promissory Note for the purpose of evidencing a loan charged against the loan facility secured by the mortgage.[29] She averred, though, that when Barbara and Rebecca paid half of the loan under the Promissory Note, the properties of Barbara covered by the mortgage were released by the bank from liability. The cancellation of the mortgage lien was effected by an instrument dated 27 May 1999 and reflected on the TCTs evidenced by the Annexes to the Answer.[30]

This cancellation, according to Rosalina, illegally and unjustly caused her property to absorb the singular risk of foreclosure.[31] The result, according to her, was the extinguishment of the indivisible obligation contained in the mortgage pursuant to Article 1216[32] of the Civil Code.[33]

Rosalina further averred that when the bank instituted the foreclosure proceedings, it misrepresented that her property was the only one that was covered by the mortgage; omitted from the schedule of mortgaged properties those of Barbara; and misrepresented that "the terms and condition of the aforesaid mortgage have never been changed or modified whether tacitly or expressly, by any agreement made after the execution thereof."[34]

Finally, Rosalina stated that she had made demands on Barbara and Rebecca to cause the rectification of the illegal and unjust deprivation of her property in payment of the indemnity. Allegedly, Barbara and Rebecca simply ignored her demands, so, she prayed

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[29] *Id.* at 175.

[30] *Id.* at 176-177.

[31] *Id.* at 177.

[32] Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (1144a)

[33] Records, p. 177.

[34] *Id.*

that the two be held solidarily liable for the total amount of damages and for the deficiency judgment sought in this Complaint.[35]

China Bank filed its Reply and Answer to Counterclaim.[36] It alleged that the issue of whether Rosalina obtained material benefit from the loan was not material, since she had voluntarily and willingly encumbered her property;[37] that the indivisibility of mortgage does not apply to the case at bar, since Article 2089[38] of the Civil Code presupposes several heirs, a condition that is not present in this case;[39] that nothing short of payment of the debt or an express release would operate to discharge a mortgage;[40] and that, as surety, Rosalina was equally liable as principal debtor to pay the deficiency obligation in the sum of ₱365,345.77.[41] The bank also filed its Comment/Opposition[42] to the Entry of Appearance of Atty. Edwin V. Pascua as counsel

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[35] *Id.* at 178.

[36] *Id.* at 238-248.

[37] *Id.* at 240-241.

[38] Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is expected the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied. (1860)

[39] Records, p. 243.

[40] *Id.* at 244.

[41] *Id.* at 245.

[42] *Id.* at 249-254.

for Rosalina. It said that Atty. Pascua had once been its retained lawyer pursuant to a Retainer Agreement dated 5 September 1997.[43] Because of its Opposition, Rosalina was subsequently represented by Atty. Reynaldo A. Deray.

All the parties submitted their Pre-Trial Briefs with the exception of Madeline, whose case had been archived by the RTC upon motion of China Bank for the court's failure to acquire jurisdiction over her person. The issues of the case were thereafter limited to the following: (1) whether the defendants were jointly and severally liable to pay the deficiency claim; (2) whether the surety was still liable to the bank despite the release of the mortgage of the principal borrower; (3) whether there was a previous agreement among the defendants that Barbara and Rebecca would receive half and Rosalina and Madeline, the other half; and (4) whether respondent bank still had a cause of action against the surety after the mortgage of the principal borrower had been released by the bank.[44]

THE RULING OF THE RTC

The RTC ruled that although no sufficient proof was adduced to show that Rosalina had obtained any pecuniary benefit from the loan agreement between Rebecca and Barbara and China Bank, the mortgage between Rosalina and China Bank was still valid[45] The trial court declared that respondent bank had therefore lawfully foreclosed the mortgage over the property of Rosalina, even if she was a mere accommodation mortgagor.[46] The RTC also declared Rosalina's claim to be without merit and without basis in law and jurisprudence. She claimed that because the Real Estate Mortgage covering her property was a single and indivisible contract, China Bank's act of releasing the principal debtors' properties resulted in the extinguishment of the obligation.[47]

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[43] *Id.* at 250.

[44] *Id.* at 389.

[45] *Id.* at 614.

[46] *Id.*

[47] *Id.* at 615.

The trial court held that the creditor had the right to proceed against any one of the solidary debtors, or some or all of them simultaneously; and that a creditor's right to proceed against the surety exists independently of the creditor's right to proceed against the principal.[48]

Finally, the RTC ordered Rebecca, Barbara and Rosalina to be jointly and severally liable to China Bank for the deficiency between the acquisition cost of the foreclosed real estate property and the outstanding loan obligation of Barbara and Rebecca at the time of the foreclosure sale. Interest was set at the rate of 12% per annum from 13 January 2000 until full payment. Rebecca and Barbara were also ordered to reimburse Rosalina for the amount of the deficiency payment charged against her including interests thereon.[49]

THE RULING OF THE CA

Rosalina filed a timely Notice of Appeal and imputed error to the trial court in finding her, together with Rebecca and Barbara, jointly and severally liable to pay the deficiency claim; in finding that she was still liable as surety even if the bank had already released the collateral of the principal borrower; and in not annulling the foreclosure sale of the property, not reconveying the property to her, and not awarding her damages as prayed for in her counterclaim. She said that these were done by the court despite the fact that China Bank had deliberately and maliciously released the properties of the principal borrowers, thereby exposing her property to risk.[50]

The CA found the appeal bereft of merit.[51] It qualified Rosalina as a surety who had assumed or undertaken a principal debtor's responsibility or obligation. As such, she was supposed to be principally liable for the payment of the debt in case the principal debtors did not pay, regardless of their financial capacity to

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[48] *Id.*

[49] *Id.* at 617.

[50] *Rollo*, pp. 97-98.

[51] *Id.* at 44.

do so.[52] As for the deficiency, the CA cited *BPI Family Savings Bank v. Avenido*.[53] The Supreme Court had ruled therein that the creditor was not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the real estate mortgage, would result in a deficiency.[54] The CA ultimately affirmed the RTC Decision *in toto*[55] and denied the Motion for Reconsideration.[56] Hence, this Petition.

Before this Court, petitioner Rosalina now imputes error to the CA's affirmance of the RTC Decision. She says that the CA Decision was not in accord with law and jurisprudence in holding that petitioner, jointly and severally with Barbara and Rebecca, was liable to pay China Bank's deficiency claim after the bank's release of the collateral of the principal debtors. Respondent bank's alleged act of exposing Rosalina's property to the risk of foreclosure despite the indivisible character of the Real Estate Mortgage supposedly violated Article 2089 of the New Civil Code.[57]

China Bank filed its Comment[58] claiming that all the grounds cited by petitioner were "mere reiterations, repetitions, or rehashed grounds and arguments raised in the Appellant's Brief x x x which were exhaustively passed upon and considered by the CA in its Decision";[59] and that the petition "is wanting of any new, substantial and meritorious grounds that would justify the reversal of the CA Decision affirming the RTC decision."[60]

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[52] *Id.* at 44-45.

[53] G.R. No. 175816, 7 December 2011, 661 SCRA 758.

[54] *Rollo*, p. 46.

[55] *Id.* at 47.

[56] *Id.* at 24.

[57] *Id.* at 14.

[58] *Rollo*, pp. 172-185.

[59] *Id.* at 174.

[60] *Id.* at 179.

THE ISSUE

The sole issue to be resolved by this Court is whether petitioner Rosalina is liable jointly and severally with Barbara and Rebecca for the payment of respondent China Bank's claims.

THE RULING OF THIS COURT

Loan transactions in banking institutions usually entail the execution of loan documents, typically a promissory note, covered by a real estate mortgage and/or a surety agreement.[61] In the instant case, petitioner Rosalina admitted that she was a party to these loan documents although she vehemently insisted that she had received nothing from the proceeds of the loan.[62] Meanwhile, respondent bank offered in evidence the Promissory Note, the Real Estate Mortgage and the Surety Agreement signed by the parties.

We find that Rosalina is liable as an accommodation mortgagor.

In *Belo v. PNB*,[63] we had the occasion to declare:

> An accommodation mortgage is not necessarily void simply because the accommodation mortgagor did not benefit from the same. The validity of an accommodation mortgage is allowed under Article 2085 of the New Civil Code which provides that (t)hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would he contrary to his designation as such.[64]

Apart from being an accommodation mortgagor, Rosalina is also a surety, defined under Article 2047 of the Civil Code in this wise:

> Art. 2047. By guaranty a person, called a guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

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[61] *Gateway v. Asianbank*, 395 Phil. 353 (2008).

[62] See notes 27 and 28.

[63] 405 Phil. 851 (2001).

[64] *Id.* at 87.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

A contract of suretyship (second paragraph of Article 2047) has been juxtaposed against a contract of guaranty (first paragraph of Article 2047) as follows:

A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor. A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. In other words, a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor.[65] (Citations omitted)

In *Inciong, Jr. v. CA*,[66] we elucidated further in this wise:

While a guarantor may bind himself solidarily with the principal debtor, the liability of a guarantor is different from that of a solidary debtor. Thus, Tolentino explains:

> A guarantor who binds himself *in solidum* with the principal debtor under the provisions of the second paragraph does not become a solidary co-debtor to all intents and purposes. There is a difference between a solidary co-debtor, and a *fiador in solidum* (surety), The latter, outside of the liability he assumes to pay the debt before the property of the principal debtor has been exhausted, retains all the other rights, actions and benefits which pertain to him by reason of the *fiansa*; while a solidary co-debtor has no other rights than those bestowed upon him in Section 4, Chapter 3, title I, Book IV of the Civil Code.

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[65] *Palmares v. CA*, 351 Phil. 664, 680-681 (1998).

[66] 327 Phil. 364 (1996).

Section 4, Chapter 3, Title I, Book IV of the Civil Code states the law on joint and several obligations. Under Art. 1207 thereof, when there are two or more debtors in one and the same obligation, the presumption is that the obligation is joint so that each of the debtors is liable only for a proportionate part of the debt. There is a solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.[67] (Citations omitted)

Further discussion on the same legal concept proceeded thusly:

A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.

Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A surety is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promissor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of guaranty is the guarantor's own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.

Simply put, a surety is distinguished from a guaranty in that a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay is the principal is ***unable to pay*** while a surety is the insurer of the debt, and he obligates himself to pay if the principal ***does not pay***.[68] (Citations omitted)

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[67] *Id.* at 373.

[68] *E. Zobel, Inc. v. CA*, 352 Phil. 608, 614-615 (1998).

When Rosalina affixed her signature to the Real Estate Mortgage as mortgagor and to the Surety Agreement as surety which covered the loan transaction represented by the Promissory Note, she thereby bound herself to be liable to China Bank in case the principal debtors, Barbara and Rebecca, failed to pay. She consequently became liable to respondent bank for the payment of the debt of Barbara and Rebecca when the latter two actually did not pay.

China Bank, on the other hand, had a right to proceed after either the principal debtors or the surety when the debt became due. It had a right to foreclose the mortgage involving Rosalina's property to answer for the loan.

The proceeds from the extrajudicial foreclosure, however, did not satisfy the entire obligation. For this reason, respondent bank instituted the present Complaint against Barbara and Rebecca as principals and Rosalina as surety.

A mortgage is simply a security for, and not a satisfaction of indebtedness.[69] If the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor.[70] We have already recognized this rule:

> While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation singly because he chose to extrajudicially foreclose the real estate mortgage.[71]

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[69] *Suico Rattan & Buri Interiors, Inc. v. CA*, G.R. No. 138145, 15 June 2006, 490 SCRA 560.

[70] See note 38.

[71] *BPI v. Reyes*, 680 Phil. 718, 725 (2012), citing *BPI v. Avenido*, G.R. No. 175816, 7 December 2011, 661 SCRA 758.

The creditor, respondent China Bank in this Petition, is therefore not precluded, from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the Real Estate Mortgage, would result in a deficiency.

Rosalina protests her liability for the deficiency. She claims that China Bank cancelled the mortgage lien and released the principal borrowers from liability. She contends that this act violated Article 2089 of the Civil Code on the indivisibility of mortgage and ultimately discharged her from liability as a surety.

We disagree.

A resort to the terms of the Surety Agreement can easily settle the question of whether Rosalina should still be held liable. The agreement expressly contains the following stipulation:

> **The Surety(ies)** expressly waive all rights to demand for payment and notice of non-payment and protest, and **agree that the securities** of every kind that are now and may hereafter be left with the Creditor its successors, indorsees or assigns as collateral to any evidence of debt or obligation, or upon which a lien may exist therefor, **may be substituted, withdrawn or surrendered at any time**, and the time for the payment of such obligations extended, **without notice to or consent by the Surety(ies)** x x x.[72] (Emphases supplied)

We therefore find no merit in Rosalina's protestations in this petition. As provided by the quoted clause in the contract, she not only waived the rights to demand payment and to receive notice of nonpayment and protest, but she also expressly agreed that the time for payment may be extended. More significantly, she agreed that the securities may be "substituted, withdrawn or surrendered at any time" without her consent or without notice to her. That China Bank indeed surrendered the properties of the principal debtors was precisely within the ambit of this provision in the contract. Rosalina cannot now contest that act in light of her express agreement to that stipulation.

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[72] Records, pp. 13-14.

There have been similar cases in which this Court was tasked to rule on whether a surety can be discharged from liability due to an act or omission of the creditor. A review of these rulings reveals though, that in the absence of an express stipulation, the surety was discharged from liability if the act of the creditor was such as would be declared negligent or constitutive of a material alteration of the contract. On the other hand, in the presence of an express stipulation in the surety agreement allowing these acts, the surety was not considered discharged and was decreed to be bound by the stipulations.

In *PNB v. Manila Surety*,[73] the Court *en banc* declared the surety discharged from liability on account of the creditor's negligence. In that case, the creditor failed to collect the amounts due to the debtor contrary to the former's duty to make collections as holder of an exclusive and irrevocable power of attorney. The negligence of the creditor allowed the assigned funds to be exhausted without notice to the surety and ultimately resulted in depriving the latter of any possibility of recourse against that security.

Also, in *PNP v. Luzon Surety,*[74] the Court hinted at the possibility of the surety's discharge from liability. It was recognized in that case that in this jurisdiction, alteration can be a ground for release. The Court clarified, though, that this principle can only be successfully invoked on the condition that the alteration is material. Failure to comply with this requisite means that the surety cannot be freed from liability. Applying this doctrine in that case, the Court ruled that the alterations in the form of increases in the credit line with the full consent of the surety did not suffice to release the surety.

Meanwhile, in *Palmares v. CA*,[75] the Court ruled:

It may not be amiss to add that leniency shown to a debtor in default, by delay permitted by the creditor without change in the

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[73] 122 Phil. 106 (1965).

[74] 160-A Phil. 854 (1975).

[75] *Id.* at 686-687.

time when the debt might be demanded, does not constitute an extension of the time of payment, which would release the surety. In order to constitute an extension discharging the surety, it should appear that the extension of the time was for a definite period, pursuant to an enforceable agreement between the principal and the creditor, and that it was made without the consent of the surety or with the reservation of rights with respect to him. The contract must be one which precludes the creditor from, or at least hinders him in, enforcing the principal contract with the period during which he could otherwise have enforced it, and which precludes the surety from paying the debt. (Citations omitted)

In *E. Zobel, Inc. v. CA, et al.*,[76] the Court upheld the validity of the provision on the continuing guaranty — which we had earlier interpreted as a surety consistent with its contents and intention of the parties. The Court upheld the validity of the provision despite the insistence of the surety that he should be released from liability due to the failure of the creditor to register the mortgage. In particular, the Court decreed:

SOLIDBANK's failure to register the chattel mortgage did not release petitioner from the obligation. In the Continuing Guaranty executed in favor of SOLIDBANK, petitioner bound itself to the contract irrespective of the existence of any collateral. It even released SOLIDBANK from any fault or negligence that may impair the contract. The pertinent portions of the contract so provides:

> the undersigned (petitioner) who hereby agrees to be and remain bound upon this guaranty, irrespective of the existence, value or condition of any collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, sale, application, renewal or extension, and notwithstanding also that all obligations of the Borrower to you outstanding and unpaid at any time(s) may exceed the aggregate principal sum herein above prescribed.
>
> This is a Continuing Guaranty and shall remain in force and effect until written notice shall have been received by you that it has been revoked by the undersigned, but any such notice shall not be released the undersigned from any liability as to

[76] 352 Phil. 608 (1998).

> any instruments, loans, advances or other obligations hereby guaranteed, which may be held by you, or in which you may have any interest, at the time of the receipt of such notice. No act or omission of any kind on your part in the premises shall in any event affect or impair this guaranty, nor shall same be affected by any change which may arise by reason of the death of the undersigned, of any partner(s) of the undersigned, or of the Borrower, or of the accession to any such partnership of any one or more new partners.[77]

Another illustrative case is *Gateway Electronics Corporation and Geronimo delos Reyes v. Asianbank*,[78] in which the surety similarly asked for his discharge from liability. He invoked the creditor's repeated extensions of maturity dates to the principal debtor's request, without the surety's knowledge and consent. Still, this Court ruled:

> Such contention is unacceptable as it glosses over the fact that the waiver to be notified of extensions is embedded in surety document itself, built in the ensuing provision:
>
> > In case of default by any/or all of the DEBTOR(S) to pay the whole part of said indebtedness herein secured at maturity, I/WE jointly and severally, agree and engage to the CREDITOR, its successors and assigns, the prompt payment, without demand or notice from said CREDITOR of such notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with interest, penalty and other bank charges as may accrue thereon and all expenses which may be incurred by the latter in collecting any or all such instruments.[79]

On Rosalina's argument that the release of the mortgage violates the indivisibility of mortgage as enunciated in Article 2089[80] of the Civil Code, *People's Bank and Trust Company*

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[77] *Id.* at 618-619.

[78] 595 Phil. 353 (2008).

[79] *Id.* at 377.

[80] See note 55.

v. Tambunting, et al.[81] is most instructive. In that case, the surety likewise argued that he should be discharged from liability. He alleged that the creditor had extended the time of payment and released the shares pledged by the principal debtors without his consent. The Court *en banc* found his argument unpersuasive and decreed:

1. It is thus obvious that the contract of absolute guaranty executed by appellant Santana is the measure of rights and duties. As it is with him, so it is with the plaintiff bank. What was therein stipulated had to be complied with by both parties. Nor could appellant have any valid cause for complaint. He had given his word; he must live up to it. Once the validity of its terms is conceded, he cannot be indulged in his unilateral determination to disregard his commitment. A promise to which the law accords binding force must be fulfilled. It is as simple as that. So the Civil Code explicitly requires: "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

2. It could have been different if there were no such contract of absolute guaranty to which appellant was a party under the aforesaid Article 2080. He would have been freed from the obligation as a result of plaintiff releasing to the Tambuntings without his consent the 135 shares of the International Sports Development Corporation pledged to plaintiff bank to secure the overdraft line. For thereby subrogation became meaningless. Such a provision is intended for the benefit of a surety. That was a right he could avail of. He is not precluded however from waiving it. That was what appellant did precisely when he agreed to the contract of absolute guaranty. Again the law is clear. A right may be waived unless it would be contrary to law, public order, public policy, morals or good customs. There is no occasion here for the exceptions coming into play x x x[82]

While we rule that Rosalina, along with the principal debtors, Barbara and Rebecca, is still liable as a surety for the deficiency amount, we modify the RTC's imposition of interest rate at 12% per annum, which the CA subsequently affirmed. We must modify the rates according to prevailing jurisprudence. Hence,

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[81] 149 Phil. 169 (1971).

[82] *Id.* at 174-175.

the 12% legal interest should be imposed on the deficiency amount from 13 January 2000 until 30 June 2013 and 6% legal interest from 1 July 2013 until full payment.

WHEREFORE, premises considered, the assailed CA Decision and Resolution finding Rosalina Carodan jointly and severally liable with Barbara Perez and Rebecca Perez-Viloria for the deficiency amount are **AFFIRMED WITH MODIFICATIONS**. Rebecca, Barbara and Rosalina are held jointly and severally liable to China Bank for the deficiency amount of ₱365,345.77 and interest thereon at the rates of 12% per annum from 13 January 2000 until 30 June 2013 and 6% per annum from 1 July 2013 until full payment; and that Rebecca and Barbara are also ordered to reimburse Rosalina for the amount charged against her including interests thereon.[83]

SO ORDERED.

Leonardo-de Castro, Bersamin, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 215107. February 24, 2016]

REPUBLIC OF THE PHILIPPINES, represented by the TOLL REGULATORY BOARD, *petitioner, vs.* **C.C. UNSON COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; DEFINED.

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[83] *Id.* at 617.

— In *Republic v. Asia Pacific Integrated Steel Corporation,* the Court defined just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such 'just'-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts are required to be more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds."

2. **ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION IN EXPROPRIATION CASES IS A FUNCTION ADDRESSED TO THE DISCRETION OF THE COURTS AND MAY NOT BE USURPED BY ANY OTHER BRANCH OR OFFICIAL OF THE GOVERNMENT; APPLICATION IN CASE AT BAR.—** The Court further stated in *National Power Corporation v. Tuazon,* that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional *raison d'être*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation." Legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. They are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount of just compensation. This Court, however, is not a trier of facts; and petitions brought under Rule 45 may only raise questions of law. x x x In this case, petitioner has repeatedly imputed error on the part of the RTC when it pegged the amount of just compensation at ₱3,500.00 per sq.m. after it took into consideration the commissioners' report. Contrary to petitioner's contention, the RTC did not only rely on the potential use of the subject properties. Absent any showing, however, that there was any serious error on the part of the trial court, its ruling and discretion should not be interfered with. To emphasize, the RTC, after

hearing, had the option either to (1) accept the report and render judgment in accordance therewith; (2) for cause shown, it may (a) recommit the same to the commissioners for further report of facts; or (b) it may set aside the report and appoint new commissioners; or (c) it may accept the report in part and reject it in part; and (d) it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken. The determination of the amount of just compensation by the RTC was even affirmed by the appellate court, which had the opportunity to examine the facts anew. Hence, the Court sees no reason to disturb it.

3. **ID.; ID.; ID.; ID.; CONSEQUENTIAL DAMAGES; IF THE RESULT OF THE EXPROPRIATION, THE REMAINING PORTION OF THE PROPERTY OF THE OWNER SUFFERS FROM IMPAIRMENT OR DECREASE IN VALUE, CONSEQUENTIAL DAMAGES WERE TO BE AWARDED; EXPLAINED.—** As a general rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value. "Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. The general rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property." Section 6 of Rule 67 speaks of consequential damages. x x x Also in *Republic v. BPI,* the Court categorically stated that if as a result of the expropriation made by the petitioner, the remaining portion of the property of the owner suffers from impairment or decrease in value, consequential damages were to be awarded.

4. **CIVIL LAW; PRINCIPLE OF UNJUST ENRICHMENT; TWO CONDITIONS REQUIRED.—** The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Antonio P. Relova for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the March 21, 2014 Decision[1] and the October 22, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 96407, which affirmed the December 23, 2009 Decision[3] and the July 6, 2010 Order[4] of the Regional Trial Court, Branch 35, Calamba City (*RTC*), in an expropriation case docketed as Civil Case No. 3818-05-C.

On August 3, 2005, a complaint for expropriation[5] was filed by petitioner Republic of the Philippines (*petitioner*), through the Toll Regulatory Board (*TRB*). Under Section 3 (c) of Presidential Decree No. 1112,[6] the TRB was authorized to condemn private property for public use upon payment of just compensation.

Petitioner, through the TRB, sought to implement the South Luzon Tollway Extension Project (*SLEP*), particularly the Calamba City, Laguna-Sto. Tomas, Batangas Section, which aimed to extend the South Luzon Expressway for faster travel in the region.

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[1] *Rollo*, pp. 29-40. Penned by Associate Justice Sesinando E. Villon, with Associate Justice Florito S. Macalino and Associate Justice Eduardo B. Peralta, Jr., concurring.

[2] *Id.* at 51.

[3] *Id.* at 41-48; penned by Judge Romeo C. De Leon.

[4] *Id.* at 49.

[5] *Id.* at 58-64.

[6] Authoring the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation Thereof and For Other Purposes.

Respondent C.C. Unson Company, Inc. (*Unson*) was the owner of the affected properties which were described as follows: (1) Lot No. 6-B (*Lot 6B*) under Transfer Certificate Title (*TCT*) No. T-57646,[7] covering an area of 8,780 sq.m.; and (2) Lot 4-C-2 (*Lot 4C2*) under TCT No. T-51596,[8] covering an area of 16,947 sq.m. It sought to expropriate Lot 6B and Lot 4C2 in the amount of ₱2,250.00 per square meter (*sq.m.*).

On November 15, 2006, petitioner filed its Motion for Leave to File Amended Complaint and to Admit Attached Amended Complaint.[9] In the Amended Complaint,[10] petitioner indicated that Lot 4C2 should have a lower zonal value of ₱1,050.00 per sq.m. instead of ₱2,250.00 per sq.m., pursuant to the certification[11] and tax declaration[12] issued by Revenue District Office No. 56 and the City Assessor's Office.

In its Answer,[13] as well as in its Answer to Amended Complaint,[14] Unson, by way of affirmative defense, alleged that both properties had been classified and assessed as residential. Thus, Lot 4C2 should have a higher value ranging from ₱5,000.00 to ₱10,000.00 per sq.m.

On December 4, 2006, Unson filed the Urgent Twin Motion: To Release Initial Deposit and to Order Plaintiff to make Additional Deposit (*twin motion*).[15] It reiterated that Lot 4C2 should have a higher valuation because the affected areas were classified as residential with zonal value in the amount of

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[7] Records, Volume I, p. 11.

[8] *Id.* at 76.

[9] *Id.* at 54-58.

[10] *Id.* at 60.

[11] *Id.* at 108.

[12] *Id.* at 77.

[13] *Id.* at 31-33.

[14] *Id.* at 38-39.

[15] *Id.* at 89-91.

₱2,250.00 per sq.m. Accordingly, Unson sought the release of an additional amount of ₱20,336,400.00 to complete the total of ₱38,130,750.00 which was required for Lot 4C2. It also prayed that petitioner release the amount of ₱37,549,350.00 pending compliance with the additional deposit of ₱20,336,400.00.

On December 20, 2006, petitioner filed the Urgent Ex-Parte Motion for Issuance of Writ of Possession[16] (*December 20, 2006 Motion*) alleging that it had already deposited ₱37,549,350.00 or 100% of the total zonal value for the said properties with the Development Bank of the Philippines (*DBP*). It prayed that a writ of possession be issued in its favor and that the RTC order the Register of Deeds of Calamba City to register the said writ and annotate the same in the subject TCTs.

On December 21, 2006, the RTC issued the Order[17] granting the December 20, 2006 motion and the motion to release initial deposit. The RTC further directed the parties to submit their nominees to the commission who would determine just compensation.

On January 3, 2007, petitioner filed its Motion for Issuance of Order of Expropriation[18] praying that an order for expropriation be issued in its favor.

In its Order,[19] dated June 15, 2007, the RTC directed petitioner to pay the additional amount of ₱20,336,400.00. To quote the RTC:

> To the mind of the Court, the affected portion of TCT No. T-51596, particularly lot 4-C-2, is classified as residential and the corresponding BIR zonal value of said affected portion should be computed at Php2,250.00 per square meter. Hence, plaintiff should make an additional deposit equivalent to Php20,336,400.00.
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> x x x From all indications, the required portion of defendant's property falls within that portion of Lot 4 (TCT No. T-51596) classified

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[16] *Id.* at 97-107.

[17] *Id.* at 110-112.

[18] *Id.* at 113-115.

[19] *Id.* at 166-168.

as residential. Plaintiff cannot simply claim that defendant has failed to delineate which portion is residential or industrial for purposes of computing the appropriate zonal value of the subject property. It should have been the plaintiff itself who must have determined first hand what particular portion of defendant's property would be traversed by the expropriation proceedings so as to conform with the deposit requirement of R.A. 8974.

In sum, Unson received the total amount of ₱57,886,750.00 from petitioner.

Through a motion,[20] dated August 14, 2007, Unson asked the trial court to include the remaining 750 sq.m. dangling lot in the expropriation proceedings. Although by no means a small area, the said 750 sq.m. lot had been rendered without value to Unson considering its resultant shape.

In the Order,[21] dated July 17, 2009, the RTC instituted the Board of Commissioners (*Board*) and appointed the following: Atty. Allan Hilbero (*Chairman Hilbero*) as chairman with Antonio Amata (*Commissioner Amata*) and Engineer Salvador Oscianas, Jr. (*Commissioner Oscianas*) as members. An ocular inspection was conducted by the Board on August 17, 2009.[22] As can be gleaned from the Commissioner's Report,[23] dated November 25, 2009, the Board considered the following factors in the assessment of just compensation:

(1) *Location Description* — the parcels of land could be reached from the National Highway via concrete Barangay Road located across Yakult Philippines Compound. The property was beside Diver Sy Liver Corporation and more or less across Laguna Rubber. At the time of the inspection, the property was undergoing road construction.

(2) *Highest and Most Profitable Use* — an analysis of the prevailing land usage led the Board to hold that industrial

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[20] *Id.* at 193-195.

[21] *Id.* at 339-340.

[22] *Id.* at 42.

[23] *Id.* at 58-67.

development would represent the highest and best use of the property.

(3) Ocular Inspection — the Board, guided by the parcellary plan, was able to identify the properties which were directly affected by the expropriation proceedings as well as the portion which would not be affected by it.

(4) Valuation/Appraisal — the Board conducted hearings and held several interviews and deliberations on the fair market value. Chairman Hilbero directed the two other commissioners to make and prepare an appraisal report on the subject properties. In his report, Commissioner Oscianas manifested that he personally inspected the property and investigated the local market conditions. He also considered the extent, character and utility of the property, the highest and best use of the property; and the sales and holding prices of similar or comparable land as basis of appraisal using the Market Data Approach. Commissioner Amata, on the other hand, did not submit any appraisal report.

(5) BIR Certificate on Zonal Valuation — using Tax Declaration Nos. E-030-05276 and E-030-05242, the members of the Board were of the consensus that the subject properties were classified as industrial which had a zonal valuation of ₱2,250.00 per sq.m.

(5) Market Value — the Board considered the narrative report of Commissioner Oscianas to determine the market value of the subject properties.

On November 12, 2009, during the deliberation of the Board on the just compensation, Chairman Hilbero directed the two other commissioners to state their respective positions. Commissioner Oscianas recommended the amount of ₱4,400 per sq.m. after considering the following factors as stated in his narrative report:[24]

a. extent, character and utility of the property;

b. highest and best use of the property; and

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[24] *Id.* at 65-66.

c. sales and holding prices of similar or comparable lands as basis of appraisal using the Market Data Approach.

d. that the property is easily accessible from the national highway;

e. that the vicinity had several existing manufacturing plants/ factories and that there are also residential subdivisions in the area; and

f. that the prices of the nearby parcels of land and similar in characteristics ranged from P3,000.00 per square meter at the lowest and P8,000.00 per square meter at the highest;

g. that the subject property is adjacent to a concrete barangay road; and

h. that it is one of the first, if not the first, parcels of land right after the existing South Luzon Expressway (SLEX).

[Underscoring Supplied]

In addition, Commissioner Oscianas opined that the consequential damages suffered by Unson should also be taken into consideration. The expropriation left two dangling lots which could no longer be utilized. It would be unfair for Unson to continue paying taxes on the lots as industrial when these could no longer be utilized for such purposes.

Commissioner Amata, on the other hand, posited that Unson was already fully compensated and that the amount of P2,250.00 per sq.m. for the two lots should be enough.

To break the stalemate, Chairman Hilbero suggested that they consider the amount of P3,000.00 as compromise amount.

The Ruling of the RTC

The RTC, after carefully considering the recommendation of the Board, fixed the amount at P3,500.00 per sq.m. as just compensation in its Decision, dated December 23, 2009.

In rendering judgment, the RTC emphasized that the Board did not only rely on the potential use of the properties as basis

for just compensation, but also considered all the factors set forth in Section 5 of Republic Act (*R.A.*) No. 8974.[25]

Relative to the consequential damages suffered by Unson, the RTC took cognizance of the expert opinion of Commissioner Oscianas, a highly qualified appraiser, that the remaining 750 sq.m. of the property which consisted of two irregularly shaped dangling lots could no longer be utilized by Unson because of the expropriation. The dispositive portion of the RTC decision reads:

> WHEREFORE, with the foregoing premises, this Court renders judgment fixing the amount of Three Thousand Five Hundred (₱3,500.00) Pesos per square meter as the just compensation for the properties of defendant corporation herein. Accordingly, the Republic of the Philippines, represented by the Toll Regulatory Board is ordered to pay the defendant corporation the amount of ₱32,158,750.00 which represents the difference between the ₱57,885,750.00 received by the defendant as provisional payment for the 25,727 sq. meter lots owned by defendant corporation and the amount of ₱90,044,500.00 computed at the rate of ₱3,500.00 per square meter.

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[25] 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale* — in order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

a. The classification and use for which the property is suited;
b. The developmental costs for improving the land;
c. The value declared by the owners;
d. The current selling price of similar lands in the vicinity;
e. The reasonable disturbance compensation for the removal and/or demolition of certain improvements on land and for the value of improvements thereon;
f. The size, shape or location, tax declaration and zonal valuation of the land;
g. The price of the land as manifested in the ocular findings, oral as well as documentary evidence submitted;
h. Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Further, the defendants are hereby ordered to pay Commissioner's fee of Ten Thousand Pesos (P10,000.00) each Commissioner.

SO ORDERED.[26]

Petitioner then filed an appeal under Rule 41, Section 2 (a) of the 1997 Rules of Civil Procedure before the CA.

The Ruling of the CA

The CA found no reversible error in the RTC's determination of just compensation and held that the conclusions and findings of fact of the trial court were entitled to great weight and should not be disturbed unless there appeared some fact or circumstance of weight which had been misinterpreted and that, if considered, would had affected the result of the case.

The CA concurred with the RTC that the highest and best use of the land would be where it was best suited in terms of profitability and utility.[27] Contrary to petitioner's assertion, the highest and best use of the land did not equate to potential use. The RTC was able to take into account several other factors in determining just compensation. The CA further held that petitioner placed too much premium on the value of the lots adjacent and similar to the subject parcels of land but there was no evidence to show that such lots were similar to the property under expropriation.[28]

Neither was there any reason for the appellate court to reverse or modify the ruling of the RTC having found that the Board substantially performed their assigned duties in accordance with law.

With respect to the 750 sq.m. dangling lot, the CA ruled that it was only just and proper that Unson be compensated as there was sufficient evidence to show that the expropriation of the subject property resulted in a complete alteration of the shape

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[26] *Rollo*, p. 48.

[27] *Id.* at 34.

[28] *Id.* at 35.

of the remaining lot.[29] The decretal portion of the CA decision reads:

> WHEREFORE, in the light of the foregoing, the decision dated December 23, 2009 and order dated July 6, 2010 of Branch 35, RTC of Calamba City in Civil Case No. 3818-05-C are hereby AFFIRMED.
>
> SO ORDERED.[30]

Petitioner filed its motion for reconsideration[31] but the same was denied by the CA in the assailed resolution,[32] dated October 22, 2014.

Hence, this petition.

REASON RELIED UPON FOR THE ALLOWANCE OF THE PETITION

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DETERMINATION OF JUST COMPENSATION IN THIS CASE.[33]

In its petition for review,[34] petitioner asserted that the commissioners' report was flawed because it took into consideration the potential use of the subject properties. The report noted the properties' industrial development as its highest and best use. The ocular inspection, however, revealed that the subject properties did not have any improvement. Hence, the conclusion arrived at by the Board was nothing but mere speculation. Petitioner further posited that the possible industrial development of the subject properties, which referred to their

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[29] *Id.* at 37.

[30] *Id.* at 39.

[31] *Id.* at 51.

[32] *Id.* at 50.

[33] *Id.* at 15.

[34] *Id.* at 3-41.

potential use, was a factor that could not have been used in determining just compensation.

In its Comment,[35] while reiterating the ruling of the CA that the "highest and best use" of expropriated properties did not equate to "potential use," Unson stressed that the courts below took into consideration several other factors other than the "highest and best use" criterion. Moreover, Unson affirmed that it should be properly compensated for the remaining 750 sq.m. of the property which served no other purpose for the corporation as it had entirely lost its value because of the fact that it was "not one, but two, dangling and irregularly shaped lots."[36]

Petitioner filed a manifestation,[37] praying that it be excused from filing a reply because the matters raised by Unson in its comment were sufficiently addressed in the petition for review.

<u>The Court's Ruling</u>

The petition is without merit.

Determination of just compensation
is a judicial function

In *Republic v. Asia Pacific* Integrated Steel Corporation,[38] the Court defined just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such 'just'-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts are required to be more circumspect in its evaluation of just compensation due the property

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[35] *Id.* at 77-85.

[36] *Id.* at 81.

[37] *Id.* at 89-91.

[38] *Republic v. Asia Pacific Integrated Steel Corporation*, G.R. No. 192100, March 12, 2014, 719 SCRA 50.

owner, considering that eminent domain cases involve the expenditure of public funds."[39]

The Court further stated in *National Power Corporation v. Tuazon*,[40] that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional *raison d'être*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation."[41] Legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. They are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount of just compensation.[42]

This Court, however, is not a trier of facts; and petitions brought under Rule 45 may only raise questions of law. This rule applies in expropriation cases as well. In *Republic v. Spouses Bautista*,[43] the Court explained the reason therefor:

> This Court is not a trier of facts. Questions of fact may not be raised in a petition brought under Rule 45, as such petition may only raise questions of law. **This rule applies in expropriation cases**. Moreover, factual findings of the trial court, when affirmed by the CA, are generally binding on this Court. An evaluation of the case and the issues presented leads the Court to the conclusion that it is unnecessary to deviate from the findings of fact of the trial and appellate courts.

Under Section 8 of Rule 67 of the Rules of Court, the trial court sitting as an expropriation court may, after hearing, accept the

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[39] *Id.* at 63.

[40] *National Power Corporation v. Tuazon*, 668 Phil. 301 (2011).

[41] *Id.* at 312.

[42] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, January 30, 2013, 689 SCRA 554, 555-556.

[43] G.R. No. 181218, January 28, 2013, 689 SCRA 349.

commissioners' report and render judgment in accordance therewith. This is what the trial court did in this case. The CA affirmed the trial court's pronouncement in toto. Given these facts, the trial court and the CA's identical findings of fact concerning the issue of just compensation should be accorded the greatest respect, and are binding on the Court absent proof that they committed error in establishing the facts and in drawing conclusions from them. There being no showing that the trial court and the CA committed any error, we thus accord due respect to their findings.

The only legal question raised by the petitioner relates to the commissioners' and the trial court's alleged failure to take into consideration, in arriving at the amount of just compensation, Section 5 of RA 8974 enumerating the standards for assessing the value of expropriated land taken for national government infrastructure projects. What escapes petitioner, however, is that the courts are not bound to consider these standards; the exact wording of the said provision is that "in order to facilitate the determination of just compensation, the courts may consider" them. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. In the absence of a finding of abuse, the exercise of such discretion may not be interfered with. For this case, the Court finds no such abuse of discretion.[44]

[Emphasis Supplied]

In this case, petitioner has repeatedly imputed error on the part of the RTC when it pegged the amount of just compensation at ₱3,500.00 per sq.m. after it took into consideration the commissioners' report. Contrary to petitioner's contention, the RTC did not only rely on the potential use of the subject properties. Absent any showing, however, that there was any serious error on the part of the trial court, its ruling and discretion should not be interfered with.

To emphasize, the RTC, after hearing, had the option either to (1) accept the report and render judgment in accordance therewith; (2) for cause shown, it may (a) recommit the same to the commissioners for further report of facts; or (b) it may set aside the report and appoint new commissioners; or (c) it

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[44] *Id.* at 362-363.

may accept the report in part and reject it in part; and (d) it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.[45]

The determination of the amount of just compensation by the RTC was even affirmed by the appellate court, which had the opportunity to examine the facts anew. Hence, the Court sees no reason to disturb it.

Payment for the 750 sq.m. dangling lots; ownership transferred to petitioner

There is no question that the remaining 750 sq.m. dangling lots were not expropriated by petitioner. The RTC and the CA, however, agreed that Unson was entitled to just compensation with respect to the said portions.

Both courts took cognizance of the report of Commissioner Oscianas that the remaining 750 sq.m. dangling lots could no longer be used for any business purpose, viz.:

> This Court likewise takes cognizance on the expert opinion of Engr. Oscianas, Jr., a highly qualified appraiser relative to the consequential damages suffered by the defendant corporation as a result of the ongoing expropriation proceedings. Based on their ocular inspection and the other documents attached to the records of this case, this Court agrees with the position of the defendant corporation that the remaining areas left to the latter will be practically unutilizable. This conclusion is arrived at because what was left to the defendant after the taking of the properties are two dangling lots with irregular shapes which can no longer be utilized for any business purposes by the defendant corporation. In fact, even if these lots are sold by the defendant corporation, there will be no takers because the remaining lots have become practically useless. Worse, the land owner will be required to pay taxes for the remaining lots

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[45] *Republic v. Spouses Tan*, 676 Phil. 337, 354 (2011), citing *National Power Corporation*, 586 Phil. 587, 604 (2008).

as industrial when these lots can no longer be utilized for industrial purposes. x x x[46]

As a general rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value. "Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. The general rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property."[47]

Section 6 of Rule 67 speaks of consequential damages. It specifically provides:

Section 6. Proceedings by commissioners. — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties, to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages**

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[46] *Rollo*, p. 48.

[47] *Republic v. Soriano*, G.R. No. 211666, February 25, 2015, citing *Republic of the Philippines v. Bank of the Philippine Islands*, G.R. No. 203039, September 11, 2013, 705 SCRA 650, 665.

assessed, or the owner be deprived of the actual value of his property so taken.

[Emphasis Supplied]

Also in *Republic v. BPI*,[48] the Court categorically stated that if as a result of the expropriation made by the petitioner, the remaining portion of the property of the owner suffers from impairment or decrease in value, consequential damages were to be awarded.

In arriving at ₱3,500.00 as the amount of just compensation, the RTC already factored in the consequential damages suffered by Unson for the unusable 750 sq.m. lots. In essence, petitioner was already ordered to pay for the dangling lots when the just compensation was pegged at ₱3,500.00. If the ownership of the dangling lots was to be retained by Unson, it would run against the equitable proscription of unjust enrichment. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.[49]

Having established that there was no serious error on the part of the lower courts in fixing the amount of just compensation, the Court deems it proper that the ownership over the dangling lots is transferred to petitioner upon payment thereof.

To effectuate the transfer of ownership, it is necessary for petitioner to pay Unson the full amount of just compensation. At this point, there is still no full payment yet. Hence, upon paying the amount of ₱32,158,750.00, the ownership of both the 25,727 sq.m. expropriated property and the remaining unutilized 750 sq.m. dangling lots should be transferred to petitioner.

WHEREFORE, the petition is **DENIED**. The March 21, 2014 Decision of the Court of Appeals in CA-G.R. CV No. 96407 and its October 22, 2014 Resolution are **AFFIRMED**. The

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[48] G.R. No. 203039, September 11, 2013, 705 SCRA 650.

[49] *Flores v. Spouses Lindo*, 664 Phil. 210, 221 (2011), citing *Republic v. Court of Appeals*, 612 Phil. 965, 982 (2009).

Republic of the Philippines, through the Toll Regulatory Board, is **ORDERED** to pay C.C. Unson Company, Inc., the amount of ₱32,158,750.00 which represents the difference between the amount of ₱57,885,750.00 already received by the respondent and the amount of ₱90,044,500.00 computed at the rate of ₱3,500.00 per square meter for the 25,727-square meter property and the dangling lots.

After full payment for the subject properties and dangling lots, ownership and title should be registered in the name of the petitioner.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Leonen, JJ.*, concur.

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 216566. February 24, 2016]

MAGELLAN AEROSPACE CORPORATION, *petitioner, vs.* **PHILIPPINE AIR FORCE,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; DEFINED AND CONSTRUED.—** Cause of action is defined as an act or omission by which a party violates a right of another. In pursuing that cause, a plaintiff must first plead in the complaint a "concise statement of the ultimate or essential facts constituting the cause of action." In particular, the plaintiff must show on the face of the complaint that there exists a legal right on his or her part, a correlative obligation of the defendant to respect such right, and an act or omission of such defendant in violation of the plaintiff's rights. Such a complaint may, however, be subjected to an immediate challenge.

2. **ID.; ID.; MOTION TO DISMISS; THE INQUIRY IS LIMITED ONLY INTO THE SUFFICIENCY, NOT THE VERACITY OF THE MATERIAL ALLEGATIONS IN THE COMPLAINT; ELUCIDATED.—** Under Section 1(g), Rule 16 of the Rules of Court (*Rules*), the defendant may file a motion to dismiss "[w]ithin the time for but before filing the answer to the complaint or pleading asserting a claim" anchored on the defense that the pleading asserting the claim stated no cause of action. In making such challenge, the defendant's issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims. It has nothing to do with the merits of the case. "Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion." The inquiry is then limited only into the sufficiency, not the veracity of the material allegations. Thus, if the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants. Conversely, the dismissal of the complaint is permitted if the allegations stated therein fail to show that plaintiff is entitled to relief. Accordingly, the survival of the complaint against a Rule 16 challenge depends upon the sufficiency of the averments made. In determining whether an initiatory pleading sufficiently pleads, the test applied is whether the court can render a valid judgment in accordance with the prayer if the truth of the facts alleged is admitted. x x x The assumption of truth (commonly known as hypothetical admission of truth), accorded under the test, does not cover all the allegations pleaded in the complaint. Only ultimate facts or those facts which the expected evidence will support are considered for purposes of the test. It does not cover legal conclusions or evidentiary facts. The reason for such a rule is quite simple. The standard requires that "[e]very pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts." Thus, trial courts need not overly stretch its limits in considering all allegations just because they were included in the complaint. Evidently, matters that are required and expected to be sufficiently included in a complaint and, thus, accorded the assumption of truth, exclude those that are mere legal conclusions, inferences, evidentiary facts, or even unwarranted deductions.

3. ID.; ID.; ID.; THREE-DAY NOTICE RULE; THE THREE-DAY NOTICE REQUIREMENT IN MOTIONS IS MANDATORY FOR BEING AN INTEGRAL COMPONENT OF PROCEDURAL DUE PROCESS; EXCEPTION; PRESENT IN CASE AT BAR.— Proceeding now to whether PAF violated the three-day notice rule relative to its motion to dismiss filed before the RTC, it has been repeatedly held that the three 3-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court as mandatory for being an integral component of procedural due process. Just like any other rule, however, this Court has permitted its relaxation subject, of course, to certain conditions. Jurisprudence provides that for liberality to be applied, it must be assured that the adverse party has been afforded the opportunity to be heard through pleadings filed in opposition to the motion. In such a way, the purpose behind the three-day notice rule is deemed realized. x x x Clearly, MAC was afforded the opportunity to be heard as its opposition to the motion to dismiss was considered by the RTC in resolving the issue raised by PAF. Objectively speaking, the spirit behind the three (3)-day notice requirement was satisfied.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition[1] for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Magellan Aerospace Corporation (MAC) seeks the review of the November 18, 2013 Decision[2] and January 26, 2015 Resolution[3] of the Court of Appeals (*CA*)

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[1] *Rollo*, pp. 9-31.

[2] *Id.* at 37-48. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias, concurring.

[3] *Id.* at 65-66. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Amy C. Lazaro-Javier, concurring.

in CA-G.R. CV No. 96589, insofar as they sustained the February 14, 2011 Order[4] of the Regional Trial Court, Branch 211, Mandaluyong City (*RTC*), in dismissing the complaint[5] filed by MAC against the respondent, Philippine Air Force (*PAF*).

The Antecedents

On September 18, 2008, PAF contracted Chervin Enterprises, Inc. (*Chervin*) for the overhaul of two T76 aircraft engines in an agreement denominated as "Contract for the Procurement of Services and Overhaul of Two (2) OV10 Engines."[6] Due to its lack of technical capability to effect the repair and overhaul required by PAF, Chervin commissioned MAC to do the work for US$364,577.00. MAC, in turn, outsourced the overhaul service from another subcontractor, National Flight Services, Inc. (*NFSI*). Eventually, the engines were overhauled and delivered to the PAF. Satisfied with the service, PAF accepted the overhauled engines.[7]

On December 15, 2008, MAC demanded from Chervin the payment of US$264,577.00 representing the balance of the contract price. In a letter to the Trade Commission of the Canadian Embassy, dated December 21, 2009, PAF confirmed that it had already released to Chervin the amount of ₱23,760,000.00, on November 7, 2008, as partial payment for the overhaul service, and that it withheld the amount of ₱2,376,000.00 as retention fund.[8]

Notwithstanding the release of funds to Chervin, MAC was not paid for the services rendered despite several demands. Unpaid, MAC demanded from PAF the release of the retained amount. In a letter, dated March 3, 2010, however, PAF rejected the demand and informed MAC that the amount could not be released as it was being held in trust for Chervin.[9]

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[4] *Id.* at 235-242. Penned by Presiding Judge Ofelia L. Calo.

[5] *Id.* at 73-88.

[6] *Id.* at 207-217.

[7] *Id.* at 38.

[8] *Id.* at 79.

[9] *Id.* at 38.

On July 6, 2010, MAC filed a complaint[10] for sum of money before the RTC against Chervin together with its Managing Director, Elvi T. Sosing (*Sosing*), and the PAF. It prayed that Chervin be ordered to pay the amount of US$264,577.00, plus 12% legal interest from January 15, 2009 until full payment; that in the event of failure of Chervin to pay the amount claimed, PAF be ordered to pay the said amount with interest and to release the retained amount of ₱2,376,000.00 plus attorneys fees and litigation expenses amounting to ₱500,000.00; and that the defendants pay the costs of suit. MAC alleged that Chervin merely acted as an agent of PAF.

On August 24, 2010, PAF moved to dismiss the complaint averring that its contract with Chervin was one for repair and overhaul and not for agency; that it was never privy to any contract between Chervin and MAC; and that it already paid Chervin on January 22, 2009, and on July 13, 2010 in full settlement of its obligations.[11]

Chervin also asked the RTC to dismiss the complaint against them asserting that MAC had no capacity to sue because of its status as a non-resident doing business in the Philippines without the required license, and that no disclosure was made that it was suing on an isolated transaction which would mean that the real party-in-interest was not MAC, but NFSI.[12]

On February 14, 2011, the RTC granted both motions to dismiss and ordered the dismissal of the complaint filed by MAC. The decretal portion of the said order reads:

> **WHEREFORE**, finding defendants **CHERVIN ENTERPRISES, INC. AND ELVI T. SOSING**, and public defendant **PHILIPPINE AIR FORCE's** motions to be impressed with merit, the same are hereby **GRANTED**.
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> **SO ORDERED.**[13]

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[10] *Id.* at 73-88.

[11] *Id.* at 39.

[12] *Id.*

[13] *Id.* at 242.

Aggrieved, MAC appealed before the CA.

On November 18, 2013, the CA partly granted MAC's appeal by reversing the RTC order of dismissal of the complaint against Chervin and Sosing. It, however, affirmed the dismissal of the complaint against PAF. The CA explained that MAC failed to show that PAF had a correlative duty of paying under the overhauling contract as it was obvious that the contract was executed only between MAC and Chervin. Thus, the CA disposed:

We **PARTIALLY GRANT** the appeal, and **REVERSE** the Order dated 14 February 2011 of the Regional Trial Court, Branch 211, Mandaluyong City, insofar as it dismissed the Complaint against defendants-appellees Chervin Enterprises, Inc., and Elvi T. Sosing. We **REMAND** the case to the RTC for the continuation of proceedings against said defendants-appellees.

IT IS SO ORDERED.[14]

MAC moved for a partial reconsideration of the decision but its motion was denied by the CA in its January 26, 2015 Resolution.

Persistent, MAC filed this petition citing the following:

GROUNDS IN SUPPORT OF THE PETITION

I. THE COURT OF APPEALS ERRED IN RULING THAT THE COMPLAINT DOES NOT STATE A CAUSE OF ACTION AGAINST RESPONDENT PAF, WHEN THE COMPLAINT CLEARLY AND SUFFICIENTLY ALLEGED ULTIMATE FACTS THAT WILL SHOW AND SUPPORT SUCH CAUSE OF ACTION.

II. THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LEGAL PRECEDENT WHEN IT RULED THAT THERE WAS NO AGENCY RELATIONSHIP BETWEEN RESPONDENT PAF AND CHERVIN/SOSING, AND DISMISSED THE COMPLAINT BASED ON FAILURE TO STATE A CAUSE OF ACTION.

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[14] *Id.* at 47.

III. THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND LEGAL PRECEDENT WHEN IT FAILED TO CONSIDER THAT RESPONDENT PAF'S MOTION TO DISMISS VIOLATED THE MANDATORY RULE ON NOTICE FOR MOTIONS AND SHOULD NOT HAVE BEEN TAKEN COGNIZANCE BY THE RTC IN THE FIRST PLACE.[15]

MAC prays that its complaint against PAF be reinstated and that this Court rule that (1) the CA erred in finding that the complaint against PAF failed to sufficiently state a cause of action; (2) the conclusion of the CA that no agency relationship existed between PAF and Chervin is premature as such conclusion can only be had after the trial on the merits is conducted; and (3) PAF violated the three-day notice rule relative to the motion to dismiss filed before the RTC.

The Court's Ruling

The Court denies the petition.

Cause of action is defined as an act or omission by which a party violates a right of another.[16] In pursuing that cause, a plaintiff must first plead in the complaint a "concise statement of the ultimate or essential facts constituting the cause of action."[17] In particular, the plaintiff must show on the face of the complaint that there exists a legal right on his or her part, a correlative obligation of the defendant to respect such right, and an act or omission of such defendant in violation of the plaintiff's rights.[18]

Such a complaint may, however, be subjected to an immediate challenge. Under Section 1 (g), Rule 16 of the Rules of Court

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[15] *Id.* at 17.

[16] *Soloil, Inc. v. Philippine Coconut Authority*, 642 Phil. 337 (2010), citing Section 2, Rule 2 of the Rules of Court.

[17] *Philippine Daily Inquirer v. Hon. Alameda*, 573 Phil. 338, 345 (2008).

[18] *Spouses Noynay v. Citihomes Builder and Development, Inc.*, G.R. No. 204160, September 22, 2014, 735 SCRA 708, citing *Fluor Daniel, Inc. v. E.B. Villarosa Partners Co., Ltd.*, 555 Phil. 295, 301 (2007), citing further *Alberto v. Court of Appeals,* 393 Phil. 253, 268 (2000).

(*Rules*), the defendant may file a motion to dismiss "[w]ithin the time for but before filing the answer to the complaint or pleading asserting a claim" anchored on the defense that the pleading asserting the claim stated no cause of action.[19]

In making such challenge, the defendant's issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims.[20] It has nothing to do with the merits of the case. "Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion."[21] The inquiry is then limited only into the sufficiency, not the veracity of the material allegations.[22] Thus, if the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed

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[19] The Rules of Court, Rule 16, **Section 1**. Grounds. — **Within the time for but before filing the answer** to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) **That the pleading asserting the claim states no cause of action;**
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and
(j) That a condition precedent for filing the claim has not been complied with. (Emphasis supplied)

[20] *Twombly v. Bell Atl. Corp.*, 425 F.3d 99, 106 (2d Cir. 2005).

[21] *Heirs of Marcelo Sotto v. Palicto,* G.R. No. 159691, February 17, 2014, 716 SCRA 175, 183-184.

[22] *Ulpiano Balo, CA,* 508 Phil. 224, 231 (2005), citing *Ventura v. Bernabe*, 148 Phil. 610 (1971), cited in *Dabuco v. Court of Appeals*, 379 Phil. 939 (2000).

regardless of the defense that may be presented by the defendants.[23] Conversely, the dismissal of the complaint is permitted if the allegations stated therein fail to show that plaintiff is entitled to relief.

Accordingly, the survival of the complaint against a Rule 16 challenge depends upon the sufficiency of the averments made. In determining whether an initiatory pleading sufficiently pleads, the test applied is whether the court can render a valid judgment in accordance with the prayer if the truth of the facts alleged is admitted.[24]

In this case, MAC seeks the Court's attention to the following allegations in the complaint as cited in the petition:

5. On or about 18 September 2008, defendant PAF contracted defendant Chervin for the overhaul of two (2) T76 aircraft engines, with serial numbers GE-00307 and GE-00039, respectively.

6. Defendant Chervin did not and does not have the capacity, technical skilled personnel or tools to directly perform the overhaul of aircraft engines. In order to perform the overhaul services, defendant Chervin and its Managing Director/Proprietor, defendant Sosing, acting for and on behalf or for the benefit of defendant PAF, commissioned plaintiff to perform the services and to overhaul the subject aircraft engines for the price of US$364,577.00.

x x x x x x x x x

10. Meanwhile, on or about 7 November 2008, defendant PAF released the amount of Twenty Three Million Seven Hundred Sixty Thousand Pesos (₱23,760,000.00) to its agents, defendants Chervin and Sosing, as payment of 90% of the total price of the overhaul services. Defendant PAF retained a 10% retention fund in the amount of Two Million Three Hundred Seventy Six Thousand Pesos (₱2,376,000.00). A copy of defendant PAF's letter dated 21 December 2009 to Trade Commissioner of the Canadian Embassy, affirming

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[23] *Jan-Dec Construction Corporation v. CA*, 517 Phil. 96, 108 (2006), citing *Vda. de Daffon v. Court of Appeals,* 436 Phil. 233, 239 (2002). judiciary/supreme_court/jurisprudence/2002/aug2002/129017.htm

[24] See *Unicapital, Inc. v. Consing, Jr.,* G.R. Nos. 175277 and 175285, September 11, 2013, 705 SCRA 511, 526; citations omitted.

the PAF's release and retention of the aforestated sums of money, is attached hereto as Annex "I".

11. However, notwithstanding defendant PAF's release of funds covering 90% payment for the repair of the subject aircraft engines, defendant PAF's agents — defendants Chervin and Sosing — did not pay plaintiff for the services rendered, leaving an indebtedness to plaintiff in the amount of Two Hundred Sixty Four Thousand Five Hundred Seventy Seven US Dollars (US$264,577.00).

x x x x x x x x x

18. Meanwhile, plaintiff also sent to defendant PAF — as the principal of defendants Chervin and Sosing, and the beneficiary of plaintiffs overhaul and repair services which were commissioned by defendants Chervin and Sosing for and on its behalf — a demand letter dated 26 January 2010, demanding the release of the 10% retention amount of Two Million Three Hundred Seventy Six Thousand Pesos (₱2,376,000.00) directly to plaintiff, as partial payment of the amount owed to it. A copy of plaintiff's demand letter to defendant PAF is attached hereto as Annex "M".

19. However, in a reply letter dated 3 March 2010, defendant PAF rejected plaintiff's demand, alleging that 'the amount of retention money (₱2,376,000.00) withheld by the PAF is kept in trust for Chervin Enterprises who is the owner thereof. A copy of defendant PAF's reply letter dated 3 March 2010 is attached hereto as Annex "N".

20. As defendants Chervin's and Sosing's principal, defendant PAF must comply with all the obligations which its agents, defendants Chervin and Sosing, may have contracted within the scope of their authority (Article 1910, Civil Code of the Philippines). These obligations include paying plaintiff in full for the overhaul and repair services performed on defendant PAF's aircraft engines, which services were commissioned by defendants Chervin and Sosing for and on behalf of defendant PAF.

21. Hence, as the principal of defendants Chervin and Sosing, and the beneficiary of plaintiff's overhaul and repair services, defendant PAF must be made answerable for defendants Chervin's and Sosing's failure to pay plaintiff. Therefore, as an alternative cause of action in the event that the First Cause of Action is not and/or cannot be fully satisfied by defendants Chervin and Sosing, defendant PAF must be held liable for the outstanding amount of Two Hundred Sixty Four Thousand Five Hundred Seventy Seven

US Dollars (US$264,577.00), plus 12% legal interest thereon from 15 January 2009 until full payment is received.[25]

In essence, MAC asserts that the allegations stating that Chervin "acted for and in behalf" of a "principal," PAF, in tapping its services for the overhaul of the aircraft engines, completed with the requirements of sufficiency in stating its cause of action against PAF. MAC claims that its allegation of Chervin being "mere agents" of PAF in the overhaul contract, establishes clearly, under the premise of admitting them as true for purposes of a Rule 16 challenge, its entitlement to recover from PAF, the latter being the "principal" and "beneficiary."

The Court is not persuaded.

The standard used in determining the sufficiency of the allegations is not as comprehensive as MAC would want to impress.

The assumption of truth (commonly known as hypothetical admission of truth), accorded under the test, does not cover all the allegations pleaded in the complaint. Only ultimate facts or those facts which the expected evidence will support[26] are considered for purposes of the test.[27] It does not cover legal conclusions or evidentiary facts.

The reason for such a rule is quite simple. The standard requires that "[e]very pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts."[28] Thus, trial courts need not overly stretch its limits in considering all allegations just because they were included in

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[25] See Petition, *rollo*, pp. 18-20.

[26] *Black's Law Dictionary*, Fourth Ed., citing *McDuffie v. California Tehama Land Corporation*, 138 Cal. App. 245, 32 P.2d 385, 386.

[27] See *Abacan, Jr. v. Northwestern University, Inc.*, 495 Phil. 123, 133 (2005).

[28] The Rules of Court, Rule 8, Section 1.

the complaint. Evidently, matters that are required and expected to be sufficiently included in a complaint and, thus, accorded the assumption of truth, exclude those that are mere legal conclusions, inferences, evidentiary facts, or even unwarranted deductions.

In this case, the averment that Chervin acted as PAF's mere agents in subsequently contracting MAC to perform the overhauling services is not an ultimate fact. Nothing can be found in the complaint that can serve as a premise of PAF's status as the principal in the contract between Chervin and MAC. No factual circumstances were alleged that could plausibly convince the Court that PAF was a party to the subsequent outsourcing of the overhauling services. Not even in the annexes can the Court find any plausible basis for the assertion of MAC on PAF's status as a principal. Had MAC went beyond barren words and included in the complaint essential supporting details, though not required to be overly specific, this would have permitted MAC to substantiate its claims during the trial and survive the Rule 16 challenge. In short, factual circumstances serving as predicates were not provided to add to MAC's barren statement concerning PAF's liability.

What MAC entirely did was to state a mere conclusion of law, if not, an inference based on matters not stated in the pleading. To clarify, a mere allegation that PAF, as a principal of Chervin, can be held liable for non-payment of the amounts due, does not comply with the ultimate fact rule. Without the constitutive factual predicates, any assertion could never satisfy the threshold of an ultimate fact.

Not being an ultimate fact, the assumption of truth does not apply to the aforementioned allegation made by MAC concerning PAF. Consequently, the narrative that PAF can be held liable as a principal in the agreement between Chervin and MAC cannot be considered in the course of applying the sufficiency test used in Section 1 (g) Rule 16. It, therefore, produces no link to the alleged PAF's correlative duty to pay the amounts being claimed by MAC — a necessary element of a cause of action that must be found in the pleading.

Lacking that essential link, and after hypothetically admitting the truth of all the allegations other than those that are ought to be excluded for not being ultimate facts, it is demonstrable that the CA correctly ruled for the dismissal of the complaint on the ground of MAC's failure to state its cause of action against PAF.

The foregoing discussion makes plain that the CA did not act prematurely in dismissing the complaint. To reiterate, in a motion to dismiss filed under Section 1 (g) of Rule 16, the issue is not whether the plaintiff is entitled to relief. Instead, the issue is simply whether the plaintiff, on the basis of the allegations hypothetically admitted as true, can be permitted to substantiate the claims during the trial. The trial court only passes upon the issue on the basis of the allegations in the complaint assuming them to be true and does not make any inquiry into the truth of the allegations or a declaration that they are false.[29]

Perhaps, the CA might have been misunderstood as, indeed, the tenor of its decision apparently gave an untimely conclusion that no agency relationship existed. Be that as it may, this Court affirms the findings of the CA — that the order of dismissal of MAC's complaint against PAF is proper.

Proceeding now to whether PAF violated the three-day notice rule relative to its motion to dismiss filed before the RTC, it has been repeatedly held that the three 3-day notice requirement in motions under Sections 4 and 5, Rule 15 of the Rules of Court as mandatory for being an integral component of procedural due process.[30] Just like any other rule, however, this Court has permitted its relaxation subject, of course, to certain conditions. Jurisprudence provides that for liberality to be applied, it must be assured that the adverse party has been afforded the opportunity to be heard through pleadings filed in opposition to the motion.

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[29] *Saint Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City,* 596 Phil. 778, 804 (2009).

[30] *Cabrera v. Ng*, G.R. No. 201601, March 12, 2014, citing *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173 (2005).

In such a way, the purpose behind the three-day notice rule is deemed realized. In *Anama v. Court of Appeals*,[31] the Court explained:

> In *Somera Vda. De Navarro v. Navarro*, the Court held that there was substantial compliance of the rule on notice of motions even if the first notice was irregular because no prejudice was caused the adverse party since the motion was not considered and resolved until after several postponements of which the parties were duly notified.
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> Likewise, in *Jehan Shipping Corporation v. National Food Authority*, the Court held that despite the lack of notice of hearing in a motion for reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:
>
>> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.[32]

Here, the Court agrees with the observations of the OSG, representing PAF. Indeed, it is a matter of record that during the August 21, 2010 scheduled hearing, MAC's counsel did not object to receiving the copy of PAF's motion to dismiss on the same day. What that counsel did instead was to ask for a period of 15 days within which to file its comment/opposition to the said motion which the RTC granted. On September 14, 2010, MAC filed its Opposition.[33]

Clearly, MAC was afforded the opportunity to be heard as its opposition to the motion to dismiss was considered by the

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[31] 680 Phil. 305 (2012), citing *Fausto R. Preysler, Jr. v. Manila South Coast Development Corporation*, 635 Phil. 598, 604-605 (2010).

[32] *Anama v. Court of Appeals, supra* note 31, at 317-318.

[33] *Rollo*, pp. 223-234.

RTC in resolving the issue raised by PAF. Objectively speaking, the spirit behind the three (3)-day notice requirement was satisfied.

One Final Note

The Court has observed that Chervin was allowed and considered qualified to bid despite the fact that it had no technical capability to provide the services required by the PAF. It is quite disturbing that after Chervin's initial subcontracting agreement with MAC, another layer of subcontractor entered the scene so that the overhaul and repair could be completed. Moreover, it appears that the subcontractors engaged by Chervin are foreign entities.

These arrangements appear to be non-compliant with the rules on subcontracting particularly on disclosure and the limits on the participation of foreign entities. Under the Government Procurement Policy Board (*GPPB*) Manual of Procedures for the Procurement of Goods and Services, subcontracting rules are laid down as follows:

> Generally, a supplier may be allowed to subcontract a portion of the contract or project. However, the supplier should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed twenty percent (20%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project. **All subcontracting arrangements must be disclosed at the time of bidding, and subcontractors must be identified in the bid submitted by the supplier. Any subcontracting arrangements made during project implementation and not disclosed at the time of the bidding shall not be allowed.** The subcontracting arrangement shall not relieve the supplier of any liability or obligation under the contract. Moreover, subcontractors are obliged to comply with the provisions of the contract and shall be jointly and severally liable with the principal supplier, in case of breach thereof, in so far as the portion of the contract subcontracted to it is concerned. **Subcontractors are also bound by the same nationality requirement that applies to the principal suppliers.**[34]

[Emphases Supplied]

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[34] See the GPPB Manual of Procedures for the Procurement of Goods and Services.

Were the above stated rules adhered to? As the Court has no time and resources to probe into the matter, it is in the interest of the public that separate investigations be conducted by the Office of the Ombudsman and the Commission on Audit to find out if the provisions in the Government Procurement Reform Act (*Procurement Law*) and its implementing rules and regulations on subcontracting and participation of foreign suppliers of services were complied with.

If warranted by any initial finding of irregularities, appropriate charges should be filed against the responsible officers.

WHEREFORE, the petition is **DENIED.**

The Office of the Ombudsman and the Commission on Audit are hereby ordered to investigate and find out if the provisions in the Procurement Law and its implementing rules and regulations on subcontracting and participation of foreign bidders were complied with and file the appropriate charges, if warranted.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Leonen, JJ.*, concur.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 198434. February 29, 2016]

HEIRS OF LEANDRO NATIVIDAD AND JULIANA V. NATIVIDAD, *petitioners, vs.* **JUANA MAURICIO-NATIVIDAD, and SPOUSES JEAN NATIVIDAD CRUZ AND JERRY CRUZ,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; STATUTE OF FRAUDS; AN AGREEMENT TO CONVEY REAL PROPERTIES SHALL BE UNENFORCEABLE BY ACTION IN THE ABSENCE OF A WRITTEN NOTE OR MEMORANDUM THEREOF AND SUBSCRIBED BY THE PARTY CHARGED OR BY HIS AGENT; PRESENT IN CASE AT BAR.—** Suffice it to say that there is no partial execution of any contract, whatsoever, because petitioners failed to prove, in the first place, that there was a verbal agreement that was entered into. Even granting that such an agreement existed, the CA did not commit any error in ruling that the assignment of the shares of Sergio in the subject properties in petitioners' favor as payment of Sergio's obligation cannot be enforced if there is no written contract to such effect. Under the Statute of Frauds, an agreement to convey real properties shall be unenforceable by action in the absence of a written note or memorandum thereof and subscribed by the party charged or by his agent. As earlier discussed, the pieces of evidence presented by petitioners, consisting of respondents' acknowledgment of Sergio's loan obligations with DBP as embodied in the Extrajudicial Settlement Among Heirs, as well as the cash voucher which allegedly represents payment for taxes and transfer of title in petitioners' name do not serve as written notes or memoranda of the alleged verbal agreement.

2. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; HEIRS SUCCEED NOT ONLY TO THE RIGHTS OF THE DECEDENT BUT ALSO TO HIS OBLIGATIONS; ESTABLISHED IN CASE AT BAR.—** [T]he Court finds it proper to reiterate the CA ruling that, in any case, since respondents had already acknowledged that Sergio had, in fact, incurred loan obligations with the DBP, they are liable to reimburse the amount paid by Leandro for the payment of the said obligation even if such payment was made without their knowledge or consent. Article 1236 of the Civil Code clearly provides that: x x x **Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.** Neither can respondents evade liability by ·arguing that they were not parties to the contract between Sergio and the DBP. As earlier stated,

the fact remains that, in the Extrajudicial Settlement Among Heirs, respondents clearly acknowledged Sergio's loan obligations with the DBP. Being Sergio's heirs, they succeed not only to the rights of Sergio but also to his obligations. x x x In the present case, respondents, being heirs of Sergio, are now liable to settle his transmissible obligations, which include the amount due to petitioners, prior to the distribution of the remainder of Sergio's estate to them, in accordance with Section 1, Rule 90 of the Rules of Court.

3. **ID.; DAMAGES; RATE OF INTEREST; CIRCULAR NO. 799, SERIES OF 2013 BY THE BANGKO SENTRAL NG PILIPINAS BOARD; THE CIRCULAR REDUCED THE RATE OF INTEREST FOR THE LOAN OR FORBEARANCE OF MONEY, GOODS OR CREDITS AND THE RATE ALLOWED IN JUDGMENTS, IN THE ABSENCE OF AN EXPRESS CONTRACT AS TO SUCH RATE OF INTEREST, FROM 12% TO 6% *PER ANNUM*; APPLICATION IN CASE AT BAR.—** The rate of interest should be modified in view of the issuance of Circular No. 799, Series of 2013 by the Bangko Sentral ng Pilipinas Monetary Board *(BSP-MB).* The said Circular reduced the "rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest," from twelve percent (12%) to six percent (6%) *per annum.* The Circular was made effective on July 1, 2013. Hence, under the modified guidelines in the imposition of interest, as laid down in the case of *Nacar v. Gallery Frames.* x x x Thus, in accordance with the above ruling, the rate of interest on the principal amount due to petitioners shall be 12% from June 23, 2001, the date when petitioners made a demand for payment, to June 30, 2013. From July 1, 2013, the effective date of BSP-MB Circular No. 799, until full satisfaction of the monetary award, the rate of interest shall be 6%.

APPEARANCES OF COUNSEL

Panganiban & Associates for petitioners.
Victor F. Bernabe, Jr. for respondents.

DECISION

PERALTA, *J.*:

Challenged in the present petition for review on *certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated February 7, 2011 and August 25, 2011, respectively, in CA-G.R. CV No. 92840. The assailed CA Decision modified the Decision of the Regional Trial Court (*RTC*) of San Mateo, Rizal, Branch 75, in Civil Case No. 1637-02-SM, while the CA Resolution denied petitioners' motion for reconsideration.

The present petition arose from an action for specific performance and/or recovery of sum of money filed against herein respondents by the spouses Leandro Natividad (*Leandro*) and Juliana Natividad (*Juliana*), who are the predecessors of herein petitioners.

In their Complaint, Leandro and Juliana alleged that sometime in 1974, Sergio Natividad (*Sergio*), husband of respondent Juana Mauricio-Natividad (*Juana*) and father of respondent Jean Natividad-Cruz (*Jean*), obtained a loan from the Development Bank of the Philippines (*DBP*). As security for the loan, Sergio mortgaged two parcels of land, one of which is co-owned and registered in his name and that of his siblings namely, Leandro, Domingo and Adoracion. This property is covered by Original Certificate of Title (*OCT*) No. 5980. Sergio's siblings executed a Special Power of Attorney authorizing him to mortgage the said property. The other mortgaged parcel of land, covered by OCT No. 10271, was registered in the name of Sergio and Juana. Subsequently, Sergio died without being able to pay his obligations with DBP. Since the loan was nearing its maturity and the mortgaged properties were in danger of being foreclosed, Leandro paid Sergio's loan obligations. Considering that respondents

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios, concurring. Annex "A" to Petition, *rollo*, pp. 51-69.

[2] *Rollo*, pp. 70-73.

were unable to reimburse Leandro for the advances he made in Sergio's favor, respondents agreed that Sergio's share in the lot which he co-owned with his siblings and the other parcel of land in the name of Sergio and Juana, shall be assigned in favor of Leandro and Juliana. Leandro's and Sergio's brother, Domingo, was tasked to facilitate the transfer of ownership of the subject properties in favor of Leandro and Juliana. However, Domingo died without being able to cause such transfer. Subsequently, despite demands and several follow-ups made by petitioners, respondents failed and refused to honor their undertaking.

Respondents filed their Answer denying the allegations in the complaint and raising the following defenses: (1) respondents are not parties to the contract between Sergio and DBP; (2) there is neither verbal nor written agreement between petitioners and respondents that the latter shall reimburse whatever payment was made by the former or their predecessor-in-interest; (3) Jean was only a minor during the execution of the alleged agreement and is not a party thereto; (4) that whatever liability or obligation of respondents is already barred by prescription, laches and estoppel; (5) that the complaint states no cause of action as respondents are not duty-bound to reimburse whatever alleged payments were made by petitioners; and (6) there is no contract between the parties to the effect that respondents are under obligation to transfer ownership in petitioners' favor as reimbursement for the alleged payments made by petitioners to DBP.

Respondents waived their right to present evidence and they merely filed their memorandum. Also, during pendency of the trial, Leandro died and was substituted by his heirs, herein petitioners.

On November 4, 2008, the RTC rendered its Decision in favor of petitioners, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Defendants Juana Mauricio [Vda.] de Natividad and Jean Natividad-Cruz are ordered to effect the transfer of title in OCT

No. 5980 with respect to the undivided share of the late Sergio Natividad; and in OCT No. 10271 both of the Registry of Deeds of the Province of Rizal in favor of plaintiff Juliana [Vda.] de Natividad and the Heirs of the late Leandro Natividad.

2. Defendants to pay jointly and severally, attorney's fees in the sum of Thirty Thousand Pesos (₱30,000.00); and cost of suit.

SO ORDERED.[3]

Aggrieved by the RTC Decision, respondents filed an Appeal with the CA.

On February 7, 2011, the CA promulgated its questioned Decision, disposing as follows:

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated November 4, 2008 is hereby **MODIFIED** in that defendants-appellants Juana Mauricio-Natividad and Jean Natividad-Cruz are ordered instead to reimburse plaintiffs-appellees Juliana Natividad and the heirs of the late Leandro Natividad the amount of ₱162,514.88 representing the amount of the loan obligation paid to the Development Bank of the Philippines, plus legal interest of 12% per annum computed from June 23, 2001 until finality of the judgment, the total amount of which shall be to the extent only of defendants-appellants' successional rights in the mortgaged properties and Juana's conjugal share in [the] property covered by OCT No. 10271. The award of attorney's fees and cost of suit are **AFFIRMED.**

SO ORDERED.[4]

Petitioners filed a Motion for Partial Reconsideration, while respondents filed their own Motion for Reconsideration, both of which, however, were denied by the CA in its assailed Resolution dated August 25, 2011.

Hence, the instant petition based on the following grounds:

I. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS' RULING THAT THE VERBAL AGREEMENT TO CONVEY THE PROPERTY SHARES OF SERGIO NATIVIDAD

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[3] *Id.* at 121.

[4] *Id.* at 67-68. (Emphasis in the original)

IN THE PAYMENT OF HIS OBLIGATION IS COVERED BY THE STATUTE OF FRAUDS DESPITE THE FACT THAT IT HAS BEEN PARTIALLY EXECUTED, IS CONTRARY TO EXISTING JURISPRUDENCE.

II. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE INTEREST ON THE UNPAID LOAN OBLIGATION SHOULD BE IMPOSED ONLY ON JUNE 23, 2001, DATE OF THE DEMAND FOR PAYMENT INSTEAD OF SEPTEMBER 23, 1994, WHEN THE PARTIES VERBALLY AGREED TO CONVEY THEIR PROPERTY RIGHTS WITH THE EXECUTION OF THE EXTRAJUDICIAL SETTLEMENT OF ESTATE OF SERGIO NATIVIDAD.[5]

Petitioners insist that there was a verbal agreement between respondents and Leandro, their predecessor-in-interest, wherein the subject properties shall be assigned to the latter as reimbursement for the payments he made in Sergio's favor. To support this contention, petitioners relied heavily on the Extrajudicial Settlement Among Heirs, which was executed by respondents to prove that there was indeed such an agreement and that such a Settlement is evidence of the partial execution of the said agreement. The provisions of the said Settlement are as follows:

EXTRAJUDICIAL SETTLEMENT AMONG HEIRS

KNOW ALL MEN BY THESE PRESENTS:

This EXTRAJUDICIAL SETTLEMENT, made and entered into by and among:

JUAN M. NATIVIDAD, widow; JEAN N. CRUZ, married to JERRY CRUZ; JOSELITO M. NATIVIDAD, single, all of legal age, Filipino citizens, and residents of Malanday, San Mateo, Rizal

WITNESSETH

That the above-named parties, is the legitimate wife and children and sole heirs of the deceased SERGIO NATIVIDAD, who died in San Mateo, Rizal on May 31, 1981;

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[5] *Id.* at 40.

That the said deceased, at the time of his death, left certain real estate properties located at San Mateo, Rizal, and Montalban, Rizal, more particularly described as follows:

> a. A whole portion of a parcel of land (Plan Psu-295655, L.R. Case No. Q-29, L.R.C. Record No. N-295 ______, situated in the Barrio of Malanday, Municipality of San Mateo, Province of Rizal, containing an area of TWO HUNDRED EIGHT (208) SQUARE METERS, more or less, and covered by OCT NO. 10271.
>
> b. A one-fourth (1/4) share in the parcel of land situated in Guinayang, San Mateo, Rizal, containing an area of 2,742 square meters, covered by OCT No. 10493.
>
> c. A one-fourth (1/4) share in the parcel of land situated in San Jose, Montalban, Rizal, containing an area of 4,775 square meters, and covered by OCT No. ON-403.
>
> d. A one-fourth (1/4) share in the parcel of land situated in Cambal, San Mateo, Rizal, containing an area of 13,456 square meters, and covered by OCT No. 5980.

That no other personal properties are involved in this extrajudicial settlement.

That to the best knowledge and information of the parties hereto, the said deceased left certain obligations amounting to ₱175,000.00 representing loan obligations with the Development Bank of the Philippines.

That a notice of this extrajudicial settlement had been published once a week for three consecutive weeks in ________________ a newspaper of general circulation in ________________, as certified by the said newspaper hereto attached as Annex "A";

That the parties hereto being all of legal age and with full civil capacity to contract, hereby by these presents agree to divide and adjudicate, as they hereby divide and adjudicate, among themselves the above-described real estate property in equal shares and interest.

IN WITNESS WHEREOF, the parties have signed this document on this 2nd day of September, 1994 in San Mateo, Rizal, Philippines.

x x x x x x x x x[6]

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[6] *Id.* at 102-103.

After a careful reading of the abovequoted Extrajudicial Settlement Among Heirs, the Court agrees with the CA that there is nothing in the said document which would indicate that respondents agreed to the effect that the subject properties shall be transferred in the name of Leandro as reimbursement for his payment of Sergio's loan obligations with the DBP. On the contrary, the second to the last paragraph of the said Settlement clearly shows that herein respondents, as heirs of Sergio, have divided the subject properties exclusively among themselves.

There is no competent evidence to prove the verbal agreement being claimed by respondents. Aside from the subject Extrajudicial Settlement Among Heirs, the self-serving claims of Leandro on the witness stand, as well as the cash voucher,[7] which supposedly represented payment of ₱8,000.00 given to Atty. Domingo Natividad for the expenses in transferring the title of the subject properties in Leandro's favor, would hardly count as competent evidence in the eyes of the law. Respondents' claim of the existence of a verbal agreement between them, on one hand, and petitioners' predecessors-in-interest, on the other, remains to be mere allegation. It is an age-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[8]

In relation to petitioners' contention that the subject verbal agreement actually existed, they reiterate their contention that the conveyance of the subject properties in their favor is not covered by the Statute of Frauds because they claim that respondents' execution of the Extrajudicial Settlement Among Heirs constitutes partial execution of their alleged agreement.

The Court does not agree.

Suffice it to say that there is no partial execution of any contract, whatsoever, because petitioners failed to prove, in the first place, that there was a verbal agreement that was entered into.

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[7] *Id.* at 98.

[8] *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013, 695 SCRA 599, 608-609.

Even granting that such an agreement existed, the CA did not commit any error in ruling that the assignment of the shares of Sergio in the subject properties in petitioners' favor as payment of Sergio's obligation cannot be enforced if there is no written contract to such effect. Under the Statute of Frauds,[9] an agreement to convey real properties shall be unenforceable by action in the absence of a written note or memorandum thereof and subscribed by the party charged or by his agent. As earlier discussed, the pieces of evidence presented by petitioners, consisting of respondents' acknowledgment of Sergio's loan obligations with DBP as embodied in the Extrajudicial Settlement Among Heirs, as well as the cash voucher which allegedly represents payment for taxes and transfer of title in petitioners' name do not serve as written notes or memoranda of the alleged verbal agreement.

The foregoing, notwithstanding, the Court finds it proper to reiterate the CA ruling that, in any case, since respondents had already acknowledged that Sergio had, in fact, incurred loan obligations with the DBP, they are liable to reimburse the amount paid by Leandro for the payment of the said obligation even if such payment was made without their knowledge or consent.

Article 1236 of the Civil Code clearly provides that:

> The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.
>
> **Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.** (Emphasis supplied)

Neither can respondents evade liability by arguing that they were not parties to the contract between Sergio and the DBP. As earlier stated, the fact remains that, in the Extrajudicial Settlement Among Heirs, respondents clearly acknowledged Sergio's loan obligations with the DBP. Being Sergio's heirs,

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[9] Civil Code, Art. 1403.

they succeed not only to the rights of Sergio but also to his obligations.

The following provisions of the Civil Code are clear on this matter, to wit:

Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by will or by operation of law.

Art. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.

Art. 781. The inheritance of a person includes not only the property and the transmissible rights and obligations existing at the time of his death, but also those which have accrued thereto since the opening of the succession.

In the present case, respondents, being heirs of Sergio, are now liable to settle his transmissible obligations, which include the amount due to petitioners, prior to the distribution of the remainder of Sergio's estate to them, in accordance with Section 1,[10] Rule 90 of the Rules of Court.

As to when the interest on the sum due from respondents should be reckoned, the Court finds no error in the ruling of the

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[10] Section 1. *When order for distribution of residue made*. — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations abovementioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

CA that such interest should be computed from June 23, 2001, the date when petitioners made a written demand for the payment of respondents' obligation.[11] There is no merit in petitioners' contention that the reckoning date should have been September 23, 1994, the date when respondents executed the Extrajudicial Settlement Among Heirs, because there is nothing therein to prove that petitioners, at that time, made a demand for reimbursement.

However, the rate of interest should be modified in view of the issuance of Circular No. 799, Series of 2013 by the Bangko Sentral ng Pilipinas Monetary Board (*BSP-MB*). The said Circular reduced the "rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest," from twelve percent (12%) to six percent (6%) *per annum*. The Circular was made effective on July 1, 2013. Hence, under the modified guidelines in the imposition of interest, as laid down in the case of *Nacar v. Gallery Frames,*[12] this Court held that:

x x x x x x x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged

[11] See *rollo*, p. 101.

[12] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (Emphasis supplied)

x x x x x x x x x[13]

The Court explained that:

[F]rom the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013, the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.[14]

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[13] *Nacar v. Gallery Frames, supra*, at 457-458.

[14] *Id.* at 456. (Italics in the original)

Thus, in accordance with the above ruling, the rate of interest on the principal amount due to petitioners shall be 12% from June 23, 2001, the date when petitioners made a demand for payment, to June 30, 2013. From July 1, 2013, the effective date of BSP-MB Circular No. 799, until full satisfaction of the monetary award, the rate of interest shall be 6%.

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated February 7, 2011 and August 25, 2011, respectively, in CA-G.R. CV No. 92840 are **AFFIRMED** with **MODIFICATION** by **ORDERING** respondents to pay petitioners, in addition to the principal amount of ₱162,514.88, interest thereon at the rate of twelve percent (12%) *per annum*, computed from June 23, 2001 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction of the judgment award.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 202695. February 29, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **GJM PHILIPPINES MANUFACTURING, INC.,** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION; WHEN AN ASSESSMENT IS MADE WITHIN THE PRESCRIPTIVE PERIOD, RECEIPT BY

THE TAXPAYER MAY OR MAY NOT BE WITHIN SAID PERIOD, BUT THE TAXPAYER SHOULD ACTUALLY RECEIVE THE ASSESSMENT NOTICE, EVEN BEYOND THE PRESCRIPTIVE PERIOD. — Section 203 of the 1997 National Internal Revenue Code *(NIRC),* as amended, specifically provides for the period within which the CIR must make an assessment. x x x. [T]he CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.

2. **ID.; ID.; ID.; IF THE TAXPAYER DENIES HAVING RECEIVED AN ASSESSMENT FROM THE BUREAU OF INTERNAL REVENUE (BIR), THE *ONUS PROBANDI* SHIFTED TO THE BIR TO SHOW BY CONTRARY EVIDENCE THAT THE TAXPAYER INDEED RECEIVED THE ASSESSMENT IN THE DUE COURSE OF MAIL.—** If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed Ietter was, in fact, received by the addressee.

3. **ID.; ID.; ID.; WHILE IT IS TRUE THAT AN ASSESSMENT IS MADE WHEN THE NOTICE IS SENT WITHIN THE PRESCRIBED PERIOD, THE RELEASE, MAILING, OR**

SENDING OF THE SAME MUST STILL BE CLEARLY AND SATISFACTORILY PROVED, AS MERE NOTATIONS MADE WITHOUT THE TAXPAYER'S INTERVENTION, NOTICE OR CONTROL, AND WITHOUT ADEQUATE SUPPORTING EVIDENCE CANNOT SUFFICE, OTHERWISE, THE DEFENSELESS TAXPAYER WOULD BE UNREASONABLY PLACED AT THE MERCY OF THE REVENUE OFFICES.— To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed.

4. **REMEDIAL LAW; APPEALS; THE FINDINGS OF THE COURT OF TAX APPEALS (CTA) CAN ONLY BE DISTURBED ON APPEAL IF THEY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR THERE IS A SHOWING OF GROSS ERROR OR ABUSE ON THE PART THEREOF, AND ABSENT ANY CLEAR AND CONVINCING PROOF TO THE CONTRARY, THE COURT MUST PRESUME THAT THE CTA RENDERED A DECISION WHICH IS VALID IN EVERY RESPECT.—** The Court wishes to note and reiterate that it is not a trier of facts. The CIR mainly raised issues on factual findings which have already been thoroughly discussed below by both the CTA First Division and the CTA *En Banc.* Oft-repeated is the rule

that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. This Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect. It has been the Court's long-standing policy and practice to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases. The Court hereby sustains the order of cancellation and withdrawal of the Formal Assessment Notice No. IT-17316-99-03-282, and the Warrant of Distraint and/or Levy dated November 27, 2003.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Flores Guarin & Angeles Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

For resolution is a Petition for Review under Rule 45 of the Rules of Court which petitioner Commissioner of Internal Revenue (*CIR*) filed, praying for the reversal of the Decision[1] of the Court of Tax Appeals (*CTA*) *En Banc* dated March 6, 2012 and its Resolution[2] dated July 12, 2012 in CTA EB CASE No. 637. The CTA *En Banc* affirmed the Decision[3] of the CTA First

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[1] Penned by Associate Justice Lovell R. Bautista; unanimous; *rollo*, pp. 35-53.

[2] *Id.* at 55-59.

[3] Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, and Associate Justice Esperanza R. Fabon-Victorino; concurring.

Division dated January 26, 2010 and its Resolution[4] dated May 4, 2010 in favor of respondent GJM Philippines Manufacturing, Inc. (*GJM*).

The facts, as culled from the records, are as follows:

On April 12, 2000, GJM filed its Annual Income Tax Return for the year 1999. Thereafter, its parent company, Warnaco (HK) Ltd., underwent bankruptcy proceedings, resulting in the transfer of ownership over GJM and its global affiliates to Luen Thai Overseas Limited in December 2001. On August 26, 2002, GJM informed the Revenue District Officer of Trece Martirez, through a letter, that on April 29, 2002, it would be canceling its registered address in Makati and transferring to Rosario, Cavite, which is under Revenue District Office (*RDO*) No. 54. On August 26, 2002, GJM's request for transfer of its tax registration from RDO No. 48 to RDO No. 54 was confirmed through Transfer Confirmation Notice No. OCN ITR 000018688.

On October 18, 2002, the Bureau of Internal Revenue (*BIR*) sent a letter of informal conference informing GJM that the report of investigation on its income and business tax liabilities for 1999 had been submitted. The report disclosed that GJM was still liable for an income tax deficiency and the corresponding 20% interest, as well as for the compromise penalty in the total amount of ₱1,192,541.51. Said tax deficiency allegedly resulted from certain disallowances/understatements, to wit: (a) Loading and Shipment/Freight Out in the amount of ₱2,354,426.00; (b) Packing expense, ₱8,859,975.00; (c) Salaries and Wages, ₱2,717,910.32; (d) Staff Employee Benefits, ₱1,191,965.87; and (e) Fringe Benefits Tax, in the amount of ₱337,814.57. On October 24, 2002, GJM refuted said findings through its Financial Controller.

On February 12, 2003, the Bureau of Internal Revenue (*BIR*) issued a Pre-Assessment Notice and Details of Discrepancies against GJM. On April 14, 2003, it issued an undated Assessment Notice, indicating a deficiency income tax assessment in the

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[4] *Id.*

amount of ₱1,480,099.29. On July 25, 2003, the BIR issued a Preliminary Collection Letter requesting GJM to pay said income tax deficiency for the taxable year 1999. Said letter was addressed to GJM's former address in Pio del Pilar, Makati. On August 18, 2003, although the BIR sent a Final Notice Before Seizure to GJM's address in Cavite, the latter claimed that it did not receive the same.

On December 8, 2003, GJM received a Warrant of Distraint and/or Levy from the BIR RDO No. 48-West Makati. The company then filed its Letter Protest on January 7, 2004, which the BIR denied on January 15, 2004. Hence, GJM filed a Petition for Review before the CTA.

On January 26, 2010, the CTA First Division rendered a Decision in favor of GJM, the dispositive portion of which reads:

WHEREFORE, the deficiency income tax assessment in the amount of ₱1,480,099.29, inclusive of interest, for taxable year 1999, covered by Formal Assessment Notice No. IT-17316-99-03-282 and the Warrant of Distraint and/or Levy dated November 27, 2003, both issued against petitioner by respondent, are hereby **CANCELLED** and **WITHDRAWN**.

Accordingly, respondent is hereby **ORDERED** to cease and desist from implementing the said assessment and Warrant.

SO ORDERED.[5]

When its Motion for Reconsideration was denied, the CIR brought the case to the CTA *En Banc*.

On March 6, 2012, the CTA *En Banc* denied the CIR's petition, thus:

WHEREFORE, the Petition for Review is hereby **DENIED**. Accordingly, the impugned Decision dated January 26, 2010 and Resolution dated May 4, 2010 are hereby **AFFIRMED** *in toto.*

SO ORDERED.[6]

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[5] *Rollo*, p. 44. (Emphasis in the original)

[6] *Id.* at 52. (Emphasis in the original)

The CIR filed a Motion for Reconsideration but the same was denied for lack of merit. Thus, the instant petition.

The CIR raised the following issues:

I.

WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE (FAN) FOR DEFICIENCY INCOME TAX ISSUED TO GJM FOR TAXABLE YEAR 1999 WAS RELEASED, MAILED, AND SENT WITHIN THE THREE (3)-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC OF 1997.

II.

WHETHER OR NOT THE BIR'S RIGHT TO ASSESS GJM FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 1999 HAS ALREADY PRESCRIBED.

The petition lacks merit.

Section 203 of the 1997 National Internal Revenue Code (*NIRC*), as amended, specifically provides for the period within which the CIR must make an assessment. It provides:

SEC. 203. **Period of Limitation Upon Assessment and Collection.** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied)

Thus, the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes. Here, GJM filed its Annual Income Tax Return for the taxable year 1999 on April 12, 2000. The three (3)-year prescriptive period, therefore, was only until April 15, 2003. The records reveal that the BIR sent the FAN through registered

mail on April 14, 2003, well-within the required period. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period.[7] GJM, however, denies ever having received any FAN.

If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[8] Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[9]

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily

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[7] *Collector of Internal Revenue v. Bautista*, 105 Phil. 1326, 1327 (1959).

[8] *CIR v. Metro Star Superama, Inc.*, 652 Phil. 172, 181 (2010).

[9] *Id.*

proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.[10]

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. Also, the CIR presented the Certification signed by the Postmaster of Rosario, Cavite, Nicarter Looc, which supposedly proves the fact of mailing of the FAN and Details of Discrepancy. It also adduced evidence of mail envelopes stamped February 17, 2003 and April 14, 2003, which were meant to prove that, on said dates, the Preliminary Assessment Notice (*PAN*) and the FAN were delivered, respectively. Said envelopes also indicate that they were posted from the Makati Central Post Office. However, according to the Postmaster's Certification, of all the mail matters addressed to GJM which were received by the Cavite Post Office from February 12, 2003 to September 9, 2003, only two (2) came from the Makati Central Post Office. These two (2) were received by the Cavite Post Office on February 12, 2003 and May 13, 2003. But the registered mail could not have been the PAN since the latter was mailed only on February 17, 2003, and the FAN, although mailed on April 14, 2003, was not proven to be the mail received on May 13, 2003. The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA

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[10] *Id.*

aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003.

The Court wishes to note and reiterate that it is not a trier of facts. The CIR mainly raised issues on factual findings which have already been thoroughly discussed below by both the CTA First Division and the CTA *En Banc*. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolutions of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. This Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect. It has been the Court's long-standing policy and practice to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.[11]

The Court hereby sustains the order of cancellation and withdrawal of the Formal Assessment Notice No. IT-17316-99-03-282, and the Warrant of Distraint and/or Levy dated November 27, 2003.

WHEREFORE, PREMISES CONSIDERED, the petition is **DENIED**. The Decision of the Court of Tax Appeals *En Banc* dated March 6, 2012 and its Resolution dated July 12, 2012 in CTA EB CASE No. 637 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.*, concur.

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[11] *CIR v. Meralco,* G.R. No. 181459, June 9, 2014, 725 SCRA 384, 401.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

THIRD DIVISION

[G.R. No. 208406. February 29, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALLAN RODRIGUEZ** ***y*** **GRAJO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (AS AMENDED BY REPUBLIC ACT NO. 8353); RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353 provides: ART. 266-A of the Revised Penal Code. *Rape; When and How Committed.* – Rape is committed. 1) By a man who have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Clearly, the prosecution must prove that the offender had carnal knowledge of a woman under any of the four enumerated circumstances. Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter. x x x Rape can be established by the sole testimony of the victim that is credible and untainted with serious uncertainty. With more reason is this true when the medical findings supported the testimony of the victim, as in this case. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge. x x x The Information alleged that AAA was a 27 year old mentally-retarded woman at the time of the commission of the crime which was duly proved during the trial. As we have held, carnal knowledge of a female mental retardate with the mental age below 12 years of age is rape of a woman deprived of reason,

thus, AAA's rape fall under paragraph l(b) of Article 266-A. Considering that the prosecution had satisfactorily proved appellant's guilt beyond reasonable doubt, his conviction stands.

2. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** The RTC as affirmed by the CA correctly imposed on appellant the penalty of *reclusion perpetua* in accordance with Article 266-B paragraph 1 of the Revised Penal Code. However, pursuant to prevailing jurisprudence, we reduce the award of civil indemnity to ₱50,000.00, and the award of moral damages to ₱50,000.00. The award for exemplary damages is increased to ₱30,000.00 to conform to recent jurisprudence. The amounts of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.

3. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE TRIAL COURT; UNLESS TAINTED WITH ARBITRARINESS OR OVERSIGHT, FINDINGS OF FACT BY THE TRIAL COURT ARE ACCORDED GREAT WEIGHT, AND ARE EVEN HELD TO BE CONCLUSIVE AND BINDING; CASE AT BAR.—** It is settled that the findings of fact by the trial court are accorded great weight, and are even held to be conclusive and binding unless they were ainted with arbitrariness or oversight. This respect is but a recognition that the trial court is better situated to assess the testimonies and evidence laid out before it during the trial. x x x In this case, the records show that the findings on AAA's mental retardation was supported by the neuro-psychiatric examination and evaluation conducted by psychologist Gozar on AAA for two days. Gozar testified on her findings which were based on the different tests she administered on AAA such as the Standford Binnet Intelligence Test, which the Cartuano case cited by appellant even considered to be a test with high validity and reliability. Thus, AAA's mental retardation was established by physical and laboratory examinations.

4. **ID.; EVIDENCE; ALIBI, AS A DEFENSE; THE ACCUSED MUST CONVINCINGLY DEMONSTRATE THE PHYSICAL IMPOSSIBILITY OF HIS PRESENCE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE INCIDENT; APPLICATION IN CASE AT BAR.—** For alibi to prosper, the appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly

demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident, which appellant failed to do. In the instant case, appellant admitted that Mang Henry's house is just a walking distance from his house where AAA was raped. Thus, it was not physically impossible for appellant to have left his work momentarily to go home and raped AAA.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

Before us is an appeal from the Decision[1] dated October 22, 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 05258 finding appellant Allan Rodriguez *y* Grajo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *Reclusion Perpetua*.

In an Information[2] dated January 12, 2006, appellant was charged with the crime of rape (Article 266-A of the Revised Penal Code) committed against AAA,[3] the accusatory portion of which reads:

That on or about December 18, 2004, in the Municipality of x x x, Province of Laguna, Philippines, within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 2-15.

[2] Records, p. 1.

[3] The real names of the victim and her immediate family members, as well as any information which could establish or compromise her identity, are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

and feloniously have carnal knowledge with AAA, a 27 year-old-mentally retarded woman, to her damage and prejudice.

CONTRARY TO LAW.[4]

Appellant, duly assisted by counsel, pleaded not guilty[5] to the charge. Trial thereafter ensued.

The prosecution presented the testimonies of Lorenda Gozar, Psychologist at the National Bureau of Investigation (*NBI*) Psychiatric Services, the victim, AAA; BBB, AAA's mother; and Dr. Roy Camarillo, a Medico-Legal Officer; as well as documentary evidence. Their testimonies established the following:

Appellant and AAA were neighbors. At around 3 o'clock in the afternoon of December 18, 2004, AAA, who was then 27 years old but mentally retarded, was making rugs at their house when appellant called her to look after his one-year-old son as his wife was doing laundry work at an employer's house.[6] AAA obliged and went to appellant's house. As soon as she entered the house, appellant closed the door, kissed her, and removed her clothes and his pants.[7] He then inserted his penis into her vagina[8] and it was painful.[9] After satisfying his lust, appellant wiped the "white thing" that came out of his penis.[10] He then dressed AAA and warned her not to tell anyone about the incident. Appellant just left and played cards with his friends while AAA looked after his son until appellant's wife came back.[11]

On December 25, 2004, AAA told her mother, BBB, that appellant molested "*ginalaw*" her.[12] BBB confronted appellant

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[4] Records, p. 1.

[5] *Id.* at 43.

[6] TSN, November 26, 2007, p. 5.

[7] *Id.* at 5-6.

[8] *Id.*

[9] *Id.* at 8.

[10] *Id.* at 5.

[11] *Id.* at 6-7, 10.

[12] TSN, October 22, 2007, p. 8.

who just denied the accusation. BBB brought AAA to the police station to file a complaint against appellant.[13] AAA was referred to the Regional Crime Laboratory of Laguna and examined by Dr. Roy Camarillo who issued a medical certificate[14] which established among others, that she had a deep recently healed lacerations at 7 o'clock position which can be three weeks to two months old at the time of physical examination on January 13, 2005. He testified that the multiple lacerations were caused by the insertion of an erected penis or by a hard or blunt object.[15]

Upon receipt of the letter referral from the RTC, Lorenda Gozar conducted a battery of psychological test on AAA for two days[16] and submitted her findings embodied in a Neuro Psychiatric Examination and Evaluation Report dated September 12, 2007.[17] She diagnosed AAA to be suffering from severe mental retardation with an IQ of 38 and a mental age consistent with a six year and two months old child.[18] She further testified that based on her examination and interview on AAA, the latter can remember persons and incidents that happened in the past and she can testify in court regarding the alleged rape even with her mental age of a six years old as a four (4) year child can do so.[19] She also noted that AAA's retardation was congenital because she started walking and talking at the age of 3 years old when others can do the same at age one.[20]

Appellant denied the accusation against him testifying that on December 18, 2004 at around 3 o'clock in the afternoon, he was doing carpentry work in Mang Henry's house which was

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[13] *Id.*

[14] Records, p. 88.

[15] TSN, May 26, 2008, p. 4.

[16] TSN, October 22, 2007, pp. 3-4.

[17] Records, pp. 63-64.

[18] *Id.* at 64.

[19] TSN, October 22, 2007, p. 5.

[20] *Id.* at 6.

located at the back of his house, and got home at 6 o'clock in the evening.[21] His wife corroborated his alibi and further claimed that she was at home doing laundry work at the time of the alleged incident.[22]

On June 30, 2011, the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93, rendered its decision[23] finding appellant guilty of the crime of rape, the dispositive portion of which reads:

> WHEREFORE, the Court hereby renders judgment finding accused ALLAN RODRIGUEZ *Y* GRAJO guilty of Rape as charged and hereby sentencing him to suffer the penalty of *Reclusion Perpetua*. In addition, accused ALLAN RODRIGUEZ *Y* GRAJO is ORDERED to indemnify the victim in the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000 as exemplary damages.
>
> SO ORDERED.[24]

In so ruling, the RTC found that AAA positively identified appellant as the one who raped her and the fact of rape was confirmed by the medico legal report; that carnal knowledge of a mental retardate is rape; and that there was no reason to doubt AAA's credibility as she had no motive to falsely testify against appellant. The RTC rejected appellant's defense of alibi because of AAA's positive identification.

Appellant filed an appeal with the CA. After the submission of the parties' respective briefs, the case was submitted for decision.

On October 22, 2012, the CA dismissed the appeal for lack of merit.

The CA found that appellant is guilty of rape under Art. 266-A paragraph 1 (d) equating AAA's mental retardation with

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[21] TSN, August 4, 2009, pp. 2-4; TSN, August 16, 2010, p. 3.

[22] TSN, August 16, 2010, pp. 3-4.

[23] Docketed as Criminal Case No. 5724-SPL; Per Judge Francisco Dizon Paño; CA *rollo*, pp. 47-50.

[24] *Id.* at 50.

dementia; that AAA was a mental retardate was proved by clinical as well as testimonial evidence; and the fact of sexual congress between AAA and appellant was supported by medical findings.

Aggrieved by the aforesaid decision, the appellant filed a notice of appeal. We required the parties to submit supplemental briefs if they so desired. Both the Office of the Solicitor General[25] and the appellant[26] manifested that they were adopting their respective briefs filed with the CA as their supplemental briefs.

Appellant contends that his guilt for the crime charged was not proved beyond reasonable doubt. He alleges that AAA's testimony on her direct examination is bereft of any indication of a mentally imbalanced person who was abused against her will; that a judicious evaluation of her testimony would lead to the inescapable conclusion that the same is replete with evidence demonstrating that she was coached both in her direct and cross examinations; that she appeared spontaneous and was able to answer directly and unequivocally all the questions propounded on her.

Appellant further argues that the evaluation on AAA's alleged mental retardation was incomplete and inadequate to meet the requirements in determining a person's mental state as stated in *People v. Cartuano, Jr.* [27]

We affirm appellant's conviction for the crime of rape.

Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353 provides:

> ART. 266-A of the Revised Penal Code. *Rape; When and How Committed.* — Rape is committed.
>
> 1) By a man who have carnal knowledge of a woman under any of the following circumstances:
> a) Through force, threat or intimidation;

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[25] *Rollo*, pp. 22-23.

[26] *Id.* at 28-29.

[27] 325 Phil. 718 (1996).

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Clearly, the prosecution must prove that the offender had carnal knowledge of a woman under any of the four enumerated circumstances. Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law.[28] Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.[29]

We find that the prosecution was able to establish the elements of rape under Article 266-A of the Revised Penal Code, as amended.

AAA's mental condition was clearly shown by the Neuro-Psychiatric Examination and Evaluation Report submitted by psychologist Gozar which indicated that AAA is suffering from severe mental retardation with an I.Q. of 38 and a mental age equivalent to that of a six (6) year and two (2) month-old child; and that AAA's retardation was congenital since the latter was able to walk and started talking at the age of three while ordinarily a child should start walking and talking at the age of one.[30]

A person's mental retardation can also be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[31] Here,

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[28] *People v. Monticalvo,* G.R. No. 193507, January 30, 2013, 689 SCRA 715, 732.

[29] *Id.*, citing *People v. Dela Paz*, 569 Phil. 684, 699 (2008).

[30] TSN, October 22, 2007, p. 6.

[31] *People v. Monticalvo, supra* note 28, citing *People v. Dalandas,* 442 Phil. 688 (2002).

BBB also confirmed that her daughter is mentally retarded.[32] Dr. Camarillo also testified on AAA's mental retardation as he observed that the latter gave incoherent answers during her interview as well as the way she looked at him.[33] Notably, it was the RTC that referred AAA for a neuro-psychiatric examination and evaluation.[34] Thus, we agree with the findings of both the RTC and the CA that AAA is no doubt a mental retardate.

AAA positively identified appellant as the person who raped her. She testified in a straightforward and clear manner that appellant, whose house was just located at the back of their house, called her to babysit his one year old son. When AAA entered appellant's house, he closed the door, kissed her, removed her clothing and then his own clothes and then inserted his penis into her vagina, and it was painful. AAA's claim of sexual intercourse was corroborated by the medical report of Dr. Camarillo which showed the presence of a deep healed laceration at 7 o'clock position which was assessed to be three weeks to two months old which was caused by an insertion of an erected penis or a hard or blunt object. Hymenal lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[35]

Rape can be established by the sole testimony of the victim that is credible and untainted with serious uncertainty.[36] With more reason is this true when the medical findings supported the testimony of the victim,[37] as in this case. When the victim's

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[32] TSN, October 22, 2007, p. 8.

[33] TSN, May 26, 2008, p. 7.

[34] *Id.* at 3.

[35] *People v. Limio*, 473 Phil. 659, 671 (2004), citing *People v. Luna,* 443 Phil. 782, 803 (2003), citing *People v. Bayona,* 383 Phil. 943, 956 (2000).

[36] *People v. Butiong*, 675 Phil. 621, 631 (2001), citing *People v. Gonzales,* 477 Phil. 120, 136 (2004).

[37] *Id.*, citing *People v. Corpuz,* 517 Phil. 622, 637 (2006); *People v. Ramirez,* 422 Phil. 457, 464 (2001); *People v. Apilo*, 331 Phil. 869, 889 (1996).

testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.[38]

Appellant's allegation that AAA's testimony on her direct examination failed to show that she is a mentally imbalanced person is not persuasive.

We are not persuaded.

Psychologist Gozar testified that AAA can remember persons and the incident that happened in the past.[39] Thus, it is not improbable that she could remember such harrowing experience and recount the same. We note that despite AAA's mental condition, she never wavered in her testimony of what appellant did to her. We find AAA's testimony not coached or rehearsed as appellant claims it to be, but was only consistent with the innocent and categorical declaration of a child who had undergone a traumatic experience in the hands of appellant.

In *People v. Caoile*,[40] we held:

> The fact that AAA was able to answer in a straightforward manner during her testimony cannot be used against her. The capacity of a mental retardate to stand as a witness in court has already been settled by this Court. In *People v. Castillo*, we said:
>
> > It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Moreover, it is settled that when a woman says she has been raped, she says in effect all

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[38] *People v. Jackson*, 451 Phil. 610, 629 (2003), citing *People v. Segui,* 399 Phil. 755, 765 (2000).

[39] TSN, October 22, 2007, p. 5.

[40] G.R. No. 203041, June 5, 2013, 697 SCRA 638.

> that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused.[41]

Moreover, we find it unlikely that AAA would concoct or fabricate the charge of rape against the appellant if it was not true especially as there was no showing that she or her mother was impelled by improper motive to falsely testify against appellant. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[42]

It is settled that the findings of fact by the trial court are accorded great weight, and are even held to be conclusive and binding unless they were tainted with arbitrariness or oversight.[43] This respect is but a recognition that the trial court is better situated to assess the testimonies and evidence laid out before it during the trial.[44]

Appellant insists that it was necessary that the extent and degree of the clinical, laboratory and psychometric tests applied on AAA should be shown in detail in order to sustain a proper conclusion that she was indeed mentally deficient as held in *People v. Cartuano, Jr.*

We are not impressed.

In *People v. Butiong*,[45] we held that:

> *People v. Cartuano* applies only to cases where there is a dearth of medical records to sustain a finding of mental retardation. Indeed, the Court has clarified so in *People v. Delos Santos*, declaring that

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[41] *People v. Caoile, supra*, at 651-652.

[42] *People v. Jackson, supra* note 38, at 515, citing *People v. De la Rosa, Jr.*, 395 Phil. 643, 658 (2000).

[43] *People v. Domingo Gallano y Jaranilla*, G.R. No. 184762, February 25, 2015, citing *People v. Pandapatan*, 549 Phil. 817, 839 (2007).

[44] *Id.*

[45] *Supra* note 36.

the records in *People v. Cartuano* were wanting in clinical, laboratory, and psychometric support to sustain a finding that the victim had been suffering from mental retardation. It is noted that in *People v. Delos Santos*, the Court upheld the finding that the victim had been mentally retarded by an examining psychiatrist who had been able to identify the tests administered to the victim and to sufficiently explain the results of the tests to the trial court.[46]

In this case, the records show that the findings on AAA's mental retardation was supported by the neuro-psychiatric examination and evaluation conducted by psychologist Gozar on AAA for two days. Gozar testified on her findings which were based on the different tests she administered on AAA such as the Standford Binnet Intelligence Test, which the Cartuano case cited by appellant even considered to be a test with high validity and reliability.[47] Thus, AAA's mental retardation was established by physical and laboratory examinations.

The RTC correctly rejected appellant's denial and alibi. Appellant's defense that he was doing carpentry work in Mang Henry's house from 8 o'clock in the morning until 6 o'clock in the evening of December 18, 2004, which was corroborated by his wife is not persuasive. For alibi to prosper, the appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident,[48] which appellant failed to do. In the instant case, appellant admitted that Mang Henry's house is just a walking distance from his house where AAA was raped. Thus, it was not physically impossible for appellant to have left his work momentarily to go home and raped AAA.

We note, however, that the CA convicted appellant of the crime of rape under Art. 266A paragraph 1 (d) of the Revised

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[46] *Id.* at 575.

[47] *People v. Cartuano, Jr., supra* note 27, at 425.

[48] *People v. Limio, supra* note 35, at 672, citing *People v. Besmonte,* 445 Phil. 555, 570 (2003), citing *People v. Lachica*, 431 Phil. 764, 780-781 (2002).

Penal Code as amended, *i.e.,* rape of a demented person. In *People v. Monticalvo*,[49] however, we held:

> x x x (P)aragraph 1, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, provides for two (2) circumstances when carnal knowledge of a woman with mental disability is considered rape. Subparagraph (b) thereof refers to rape of a person "deprived of reason" while subparagraph (d) refers to rape of a "demented person." The term "deprived of reason" has been construed to encompass those suffering from mental abnormality, deficiency or retardation. The term "demented," on the other hand, means having *dementia*, which Webster defines as mental deterioration; also madness, insanity. *Dementia* has also been defined in Black's Law Dictionary as a "form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; x x x total recovery not possible since cerebral disease is involved." Thus, a mental retardate can be classified as a person "deprived of reason," not one who is "demented" and carnal knowledge of a mental retardate is considered rape under subparagraph (b), not subparagraph (d) of Article 266-A (1) of the Revised Penal Code, as amended.[50]

Based on the above-quoted disquisitions, we find that the CA erred in equating AAA's mental retardation with dementia. The Information alleged that AAA was a 27 year old mentally-retarded woman at the time of the commission of the crime which was duly proved during the trial. As we have held, carnal knowledge of a female mental retardate with the mental age below 12 years of age is rape of a woman deprived of reason,[51] thus, AAA's rape fall under paragraph 1(b) of Article 266-A. Considering that the prosecution had satisfactorily proved appellant's guilt beyond reasonable doubt, his conviction stands.

The RTC as affirmed by the CA correctly imposed on appellant the penalty of *reclusion perpetua* in accordance with Article 266-B paragraph 1 of the Revised Penal Code.

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[49] *Supra* note 28.

[50] *Id.* at 731.

[51] *People v. Butiong, supra* note 36, at 633; *People v. Dalan*, G.R. No. 203086, June 11, 2014, 726 SCRA 335, 342.

However, pursuant to prevailing jurisprudence,[52] we reduce the award of civil indemnity to ₱50,000.00,[53] and the award of moral damages to ₱50,000.00.[54] The award for exemplary damages is increased to ₱30,000.00 to conform to recent jurisprudence.[55] The amounts of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.[56]

WHEREFORE, the Decision dated October 22, 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 05258 finding appellant guilty of rape is **AFFIRMED** with **MODIFICATIONS** that appellant is **ORDERED** to **PAY** AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, with all such amounts to earn interest of six percent (6%) *per annum* from the finality of this decision until full payment.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, and *Reyes, JJ.*, concur.

Brion,[*] J., on leave.

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[52] *People v. Domingo Gallano y Jaranilla*, G.R. No. 184762, February 25, 2015.

[53] *Id.*, citing *People v. Roxas*, G.R. No. 200793, June 4, 2014, 725 SCRA 181, 199.

[54] *Id.*, citing at *People v. Gahi*, G.R. No. 202976, February 19, 2014, 717 SCRA 209, 234.

[55] *Id.*, *People v. Dalan, supra* note 51.

[56] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 27, 2014.

SECOND DIVISION

[G.R. No. 215014. February 29, 2016]

REBECCA FULLIDO, *petitioner, vs.* **GINO GRILLI,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE ONLY ISSUE TO BE RESOLVED IN AN UNLAWFUL DETAINER CASE IS THE PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES.—** Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The only issue to be resolved in an unlawful detainer case is the physical or material possession of the property involved, independent of any claim of ownership by any of the parties.
2. **ID.; ID.; ID.; CONTRACTS MAY BE DECLARED VOID EVEN IN A SUMMARY ACTION FOR UNLAWFUL DETAINER; SUSTAINED; APPLICATION IN CASE AT BAR.—** A void or inexistent contract may be defined as one which lacks, absolutely either in fact or in law, one or some of the elements which are essential for its validity. It is one which has no force and effect from the very beginning, as if it had never been entered into; it produces no effect whatsoever either against or in favor of anyone. *Quod nullum est nullum producit effectum.* Article 1409 of the New Civil Code explicitly states that void contracts also cannot be ratified; neither can the right to set up the defense of illegality be waived. Accordingly, there is no need for an action to set aside a void or inexistent contract. A review of the relevant jurisprudence reveals that the Court did not hesitate to set aside a void contract even in an action for unlawful detainer. x x x Clearly, contracts may be declared void even in a summary action for unlawful

detainer because, precisely, void contracts do not produce legal effect and cannot be the source of any rights. To emphasize, void contracts may not be invoked as a valid action or defense in any court proceeding, including an ejectment suit. x x x A contract that violates the Constitution and the law is null and void *ab initio* and vests no rights and creates no obligations. It produces no legal effect at all. Hence, as void contracts could not be the source of rights, Grilli had no possessory right over the subject land. A person who does not have any right over a property from the beginning cannot eject another person possessing the same. Consequently, Grilli's complaint for unlawful detainer must be dismissed for failure to prove his cause of action.

3. **POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; THE PURPOSE OF PROHIBITING THE TRANSFER OF LANDS TO FOREIGNERS IS TO UPHOLD THE CONSERVATION OF OUR NATIONAL PATRIMONY AND ENSURE THAT AGRICULTURAL RESOURCES REMAIN IN THE HANDS OF FILIPINO CITIZENS; EXPLAINED.—** Under Section 1 of Article XIII of the 1935 Constitution, natural resources shall not be alienated, except with respect to public agricultural lands and in such cases, the **alienation is limited to Filipino citizens**. Concomitantly, Section 5 thereof states that, save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines. The prohibition on the transfer of lands to aliens was adopted in the present 1987 Constitution, under Sections 2, 3 and 7 of Article XII thereof. Agricultural lands, whether public or private, include residential, commercial and industrial lands. The purpose of prohibiting the transfer of lands to foreigners is to uphold the conservation of our national patrimony and ensure that agricultural resources remain in the hands of Filipino citizens. The prohibition, however, is not limited to the sale of lands to foreigners. It also covers leases of lands amounting to the transfer of all or substantially all the rights of dominion. x x x Consequently, Presidential Decree (P.D.) No. 471 was enacted to regulate the lease of lands to aliens. It provides that the maximum period allowable for the duration of leases of private lands to aliens or alien-owned corporations, associations, or entities not qualified to

acquire private lands in the Philippines shall be twenty-five (25) years, renewable for another period of twenty-five (25) years upon mutual agreement of both lessor and lessee. It also provides that **any contract or agreement made or executed in violation thereof shall be null and void *ab initio*.**

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REQUIREMENTS FOR FILING A COMPLAINT FOR UNLAWFUL DETAINER, ENUMERATED. —** Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer. x x x A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

5. **ID.; ID.; ID.; DOCTRINE OF *IN PARI DELICTO*; AN ACCEPTED EXCEPTION ARISES WHEN THE APPLICATION OF THE DOCTRINE OF *IN PARI DELICTO* CONTRAVENES WELL ESTABLISHED PUBLIC POLICY; PRESENT IN CASE AT BAR.—** On a final note, the Court deems it proper to discuss the doctrine of *in pari delicto.* Latin for "in equal fault," *in pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand *in pari delicto.* The application of the doctrine of *in pari delicto* is not always rigid. An accepted exception arises when its application contravenes well- established public policy. In this jurisdiction, public policy has been defined as that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. Thus, whenever public policy is advanced by either party, they may be allowed to sue for relief against the transaction. In the present case, both Grilli and Fullido were undoubtedly parties to a void contract. Fullido, however, was not barred from filing the present petition

before the Court because the matters at hand involved an issue of public policy, specifically the Constitutional prohibition against land ownership by aliens. As pronounced in *Philippine Banking Corporation v. Lui She,* the said constitutional provision would be defeated and its continued violation sanctioned if the lands continue to remain in the hands of a foreigner. Thus, the doctrine of *in pari delicto* shall not be applicable in this case.

APPEARANCES OF COUNSEL

Casilan Law and Realty Office for respondent.
Ramon A. Cimafranca II for petitioner.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the May 31, 2013 Decision[1] and the September 24, 2014[2] Resolution of the Court of Appeals (*CA*) in CA-G.R. CEB-SP No. 06946, which affirmed the April 26, 2012 Decision[3] of the Regional Trial Court, Branch 47, Tagbilaran City (*RTC*) in Civil Case No. 7895, reversing the March 31, 2011 Decision[4] of the Municipal Circuit Trial Court, Dauis, Bohol (*MCTC*) in Civil Case No. 244, a case for unlawful detainer filed by Gino Grilli (*Grilli*) against Rebecca Fullido (*Fullido*).

The Facts

Sometime in 1994, Grilli, an Italian national, met Fullido in Bohol and courted her. In 1995, Grilli decided to build a residential

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[1] Penned by Associate Justice Ramon Paul L. Hernando with Associate Justice Pampio A. Abarintos and Associate Justice Edgardo L. Delos Santos, concurring; *rollo*, pp. 31-49.

[2] *Id.* at 51-54.

[3] Penned by Presiding Judge Suceso A. Arcamo; *id.* at 112-116.

[4] Penned by Acting Presiding Judge Jorge D. Cabalit; *id.* at 106-111.

house where he and Fullido would to stay whenever he would be vacationing in the country.

Grilli financially assisted Fullido in procuring a lot located in Biking I, Dauis, Bohol, from her parents which was registered in her name under Transfer Certificate of Title (*TCT*) No. 30626.[5] On the said property, they constructed a house, which was funded by Grilli. Upon completion, they maintained a common-law relationship and lived there whenever Grilli was on vacation in the Philippines twice a year.

In 1998, Grilli and Fullido executed a contract of lease,[6] a memorandum of agreement[7] (*MOA*) and a special power of attorney[8] (*SPA*), to define their respective rights over the house and lot.

The lease contract stipulated, among others, that Grilli as the lessee, would rent the lot, registered in the name of Fullido, for a period of fifty (50) years, to be automatically renewed for another fifty (50) years upon its expiration in the amount of ₱10,000.00 for the *whole term* of the lease contract; and that Fullido as the lessor, was prohibited from selling, donating, or encumbering the said lot without the written consent of Grilli. The pertinent provisions of the lease contract over the house and lot are as follows:

> That for and in consideration of the total amount of rental in the amount of TEN THOUSAND (₱10,000.00) PESOS, Philippine Currency, paid by the LESSEE to the LESSOR, receipt of which is hereby acknowledged, the latter hereby leases to the LESSEE a house and lot, and all the furnishings found therein, land situated at Biking I, Dauis, Bohol, Philippines, absolutely owned and belonging to the LESSOR and particularly described as follows, to wit:
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> x x x x x x x x x

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[5] *Id.* at 55-56.

[6] *Id.* at 59-60.

[7] *Id.* at 57-58.

[8] *Id.* at 61-62.

That the LESSOR and the LESSEE hereby agree as they have agreed to be bound by the following terms and conditions, to wit:

1. That the term of the lease shall be FIFTY (50) YEARS from August 16, 1998 to August 15, 2048, automatically renewed for the same term upon the expiration thereof;

x x x x x x x x x

7. That the LESSOR is strictly prohibited to sell, donate, encumber, or in any manner convey the property subject of this lease to any third person, without the written consent of the LESSEE.[9]

The said lease contract was duly registered in the Register of Deeds of Bohol.

The MOA, on the other hand, stated, among others, that Grilli paid for the purchase price of the house and lot; that ownership of the house and lot was to reside with him; and that should the common-law relationship be terminated, Fullido could only sell the house and lot to whomever Grilli so desired. Specifically, the pertinent terms of the MOA read:

NOW WHEREFORE, FOR AND IN CONSIDERATION of the foregoing premises, the parties hereto agree as they hereby covenant to agree that the FIRST PARTY (*Grilli*) shall permanently reside on the property as above-mentioned, subject to the following terms and conditions:

1. That ownership over the above-mentioned properties shall reside absolutely with herein FIRST PARTY, and the SECOND PARTY (*Fullido*) hereby acknowledges the same;

2. That the SECOND PARTY is expressly prohibited to sell the above-stated property, except if said sale is with the conformity of the FIRST PARTY;

3. That the SECOND PARTY hereby grants the FIRST PARTY, the absolute and irrevocable right, to reside in the residential building so constructed during his lifetime, or any time said FIRST PARTY may so desire;

4. That in the event the common-law relationship terminates, or when the SECOND PARTY marries another, or enters into another

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[9] *Id.* at 59-60.

common-law relationship with another, said SECOND PARTY shall be obliged to execute a DEED OF ABSOLUTE SALE over the above-stated parcel of land and residential building, in favor of whomsoever the FIRST PARTY may so desire, and be further obliged to turn over the entire consideration of the said sale to the FIRST PARTY, or if the law shall allow, the FIRST PARTY shall retain ownership of the said land, as provided for in paragraph 7 below;

x x x x x x x x x

7. That if the cases referred to in paragraph 4 shall occur and in the event that a future law shall be passed allowing foreigners to own real properties in the Philippines, the ownership of the above-described real properties shall pertain to the FIRST PARTY, and the herein undersigned SECOND PARTY undertakes to execute all the necessary deeds, documents, and contracts to effect the transfer of title in favor of the FIRST PARTY;

x x x x x x x x x.[10]

Lastly, the SPA allowed Grilli to administer, manage, and transfer the house and lot on behalf of Fullido.

Initially, their relationship was harmonious, but it turned sour after 16 years of living together. Both charged each other with infidelity. They could not agree who should leave the common property, and Grilli sent formal letters to Fullido demanding that she vacate the property, but these were unheeded. On September 8, 2010, Grilli filed a complaint for unlawful detainer with prayer for issuance of preliminary injunction against Fullido before the MCTC, docketed as Civil Case No. 244.

Grilli's Position

The complaint stated that the common-law relationship between Grilli and Fullido began smoothly, until Grilli discovered that Fullido was pregnant when he arrived in the Philippines in 2002. At first, she told him that the child she was carrying was his. After the delivery of the child, however, it became apparent that the child was not his because of the discrepancy between the child's date of birth and his physical presence in the Philippines and the difference between the baby's physical features and

[10] *Id.* at 57-58.

those of Grilli. Later on, she admitted that the child was indeed sired by another man.

Grilli further claimed that he was so devastated that he decided to end their common-law relationship. Nevertheless, he allowed Fullido to live in his house out of liberality and generosity, but this time, using another room. He did not demand any rent from Fullido over the use of his property.

After a year, Fullido became more hostile and difficult to handle. Grilli had to make repairs with his house every time he arrived in the Philippines because she was not maintaining it in good condition. Fullido also let her two children, siblings and parents stay in his house, which caused damage to the property. He even lost his personal belongings inside his house on several occasions. Grilli verbally asked Fullido to move out of his house because they were not getting along anymore, but she refused. He could no longer tolerate the hostile attitude shown to him by Fullido and her family, thus, he filed the instant complaint.

Fullido's Position

Fullido countered that she met Grilli sometime in 1993 when she was still 17 years old working as a cashier in Alturas Supermarket. Grilli was then a tourist in Bohol who persistently courted her.

At first, Fullido was hesitant to the advances of Grilli because she could not yet enter into a valid marriage. When he assured her and her parents that they would eventually be married in three years, she eventually agreed to have a relationship with him and to live as common-law spouses. Sometime in 1995, Grilli offered to build a house for her on a parcel of land she exclusively owned which would become their conjugal abode. Fullido claimed that their relationship as common-law spouses lasted for more than 18 years until she discovered that Grilli had found a new and younger woman in his life. Grilli began to threaten and physically hurt her by knocking her head and choking her.

When Fullido refused to leave their house even after the unlawful detainer case was filed, Grilli again harassed, intimidated and threatened to hurt her and her children. Thus, she filed a petition for Temporary Protection Order (TPO) and Permanent Protection Order (PPO) against Grilli under Republic Act (R.A.) No. 9262 before the Regional Trial Court, Branch 3, Bohol (*RTC-Branch 3*). In an Order,[11] dated February 23, 2011, the RTC-Branch 3 granted the TPO in favor of Fullido and directed that Grilli must be excluded from their home.

Fullido finally asserted that, although it was Grilli who funded the construction of the house, she exclusively owned the lot and she contributed to the value of the house by supervising its construction and maintaining their household.

The MCTC Ruling

In its decision, dated March 31, 2011, the MCTC dismissed the case after finding that Fullido could not be ejected from their house and lot. The MCTC opined that she was a co-owner of the house as she contributed to it by supervising its construction. Moreover, the MCTC respected the TPO issued by RTC-Branch 3 which directed that Grilli be removed from Fullido's residence. The dispositive portion of the MCTC decision reads:

WHEREFORE, judgment is hereby rendered:

1. Dismissing the instant case;
2. Ordering the Plaintiff to pay to Defendant the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages, and Twenty Thousand Pesos (₱20,000.00) as exemplary damages, and Twenty Thousand Pesos (₱20,000.00) as Attorney's Fees; and
3. Denying the prayer for the issuance of Preliminary Mandatory Injunction.

SO ORDERED.[12]

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[11] *Id.* at 90-91.

[12] *Rollo*, p. 111.

Not in conformity, Grilli elevated the matter before the RTC.

The RTC Ruling

In its decision, dated April 26, 2012, the RTC reversed and set aside the MCTC decision. The RTC was of the view that Grilli had the exclusive right to use and possess the house and lot by virtue of the contract of lease executed by the parties. Since the period of lease had not yet expired, Fullido, as lessor, had the obligation to respect the peaceful and adequate enjoyment of the leased premises by Grilli as lessee. The RTC opined that absent a judicial declaration of nullity of the contract of lease, its terms and conditions were valid and binding. As to the TPO, the RTC held that the same had no bearing in the present case which merely involved the possession of the leased property.

Aggrieved, Fullido instituted an appeal before the CA alleging that her land was unlawfully transferred by Grilli to a certain Jacqueline Guibone (*Guibone*), his new girlfriend, by virtue of the SPA earlier executed by Fullido.

The CA Ruling

In its assailed decision, dated May 31, 2013, the CA upheld the decision of the RTC emphasizing that in an ejectment case, the only issue to be resolved would be the physical possession of the property. The CA was also of the view that as Fullido executed both the MOA and the contract of lease, which gave Grilli the possession and use of the house and lot, the same constituted as a judicial admission that it was Grilli who had the better right of physical possession. The CA stressed that, if Fullido would insist that the said documents were voidable as her consent was vitiated, then she must institute a separate action for annulment of contracts. Lastly, the CA stated that the TPO issued by the RTC-Branch 3 under Section 21 of R.A. No. 9262 was without prejudice to any other action that might be filed by the parties.

Fullido filed a motion for reconsideration,[13] but she failed to attach the proofs of service of her motion. For said reason, it

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[13] *Id.* at 146-162.

was denied by the CA in its assailed resolution, dated September 24, 2014.

Hence, this present petition raising the following:

ISSUES

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DEPARTED FROM ESTABLISHED LAW AND JURISPRUDENCE IN DENYING THE PETITION FOR REVIEW AND IN AFFIRMING THE DECISION OF RTC BOHOL BRANCH 47 EJECTING PETITIONER FROM THE SUBJECT PROPERTIES, WHICH EJECTMENT ORDER IS ANCHORED ON PATENTLY NULL AND VOID CONTRACTS.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DEPARTED FROM ESTABLISHED LAW IN AFFIRMING THE DECISION OF THE RTC BOHOL BRANCH 47 EJECTING PETITIONER FROM THEIR CONJUGAL ABODE WHERE RESPONDENT HAS BEEN EARLIER ORDERED TO VACATE BY VIRTUE OF A PERMANENT PROTECTION ORDER THUS EFFECTIVELY SETTING ASIDE, NEGATING AND/OR VIOLATING AN ORDER ISSUED BY A COURT OF CO-EQUAL JURISDICTION.

III

THE HONORABLE COURT OF APPEALS LIKEWISE ERRED AND DEPARTED FROM ESTABLISHED LAW AND JURISPRUDENCE IN DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION, AMONG OTHERS, FOR NON-COMPLIANCE WITH SECTION 1 RULE 52 VIS-À-VIS SECTION 13, RULE 13 OF THE 1997 RULES OF CIVIL PROCEDURE.[14]

Fullido argues that she could not be ejected from her own lot based on the contract of lease and the MOA because those documents were null and void for being contrary to the Constitution, the law, public policy, morals and customs; that

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[14] *Id.* at 11-12.

the MOA prevented her from disposing or selling her own land, while the contract of lease favoring Grilli, a foreigner, was contrary to the Constitution as it was a for a period of fifty (50) years, and, upon termination, was automatically renewable for another fifty (50) years; that the TPO, which became a PPO by virtue of the July 5, 2011 Decision[15] of RTC-Branch 3, should not be defeated by the ejectment suit; and that the CA should have liberally applied its procedural rules and allowed her motion for reconsideration.

In his Comment,[16] Grilli countered that he was the rightful owner of the house because a foreigner was not prohibited from owning residential buildings; that the lot was no longer registered in the name of Fullido as it was transferred to Guibone, covered by TCT No. 101-2011000335; that if Fullido wanted to assail the lease contract, she should have first filed a separate action for annulment of the said contract, which she did in Civil Case No. 8094, pending before the Regional Trial Court of Bohol; and that by signing the contracts, Fullido fully agreed with their terms and must abide by the same.

In her Reply,[17] Fullido insisted that the contract of lease and the MOA were null and void, thus, these could not be the source of Grilli's *de facto* possession.

The Court's Ruling

The Court finds the petition meritorious.

Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The only issue to be resolved in an unlawful detainer case is

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[15] Penned by Presiding Judge Leo Moises Lison; *id.* at 92-105.

[16] *Id.* at 246-461.

[17] *Id.* at 296-310.

the physical or material possession of the property involved, independent of any claim of ownership by any of the parties.[18]

In this case, Fullido chiefly asserts that Grilli had no right to institute the action for unlawful detainer because the lease contract and the MOA, which allegedly gave him the right of possession over the lot, were null and void for violating the Constitution. Contrary to the findings of the CA, **Fullido was not only asserting that the said contracts were merely voidable, but she was consistently invoking that the same were completely void.**[19] Grilli, on the other hand, contends that Fullido could not question the validity of the said contracts in the present ejectment suit unless she instituted a separate action for annulment of contracts. Thus, the Court is confronted with the issue of whether a contract could be declared void in a summary action of unlawful detainer.

Under the circumstances of the case, the Court answers in the affirmative.

A void contract cannot be the source of any right; it cannot be utilized in an ejectment suit

A void or inexistent contract may be defined as one which lacks, absolutely either in fact or in law, one or some of the elements which are essential for its validity.[20] It is one which has no force and effect from the very beginning, as if it had never been entered into; it produces no effect whatsoever either against or in favor of anyone.[21] *Quod nullum est nullum producit effectum*. Article 1409 of the New Civil Code explicitly states that void contracts also cannot be ratified; neither can the right

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[18] *Piedad v. Spouses Gurieza*, G.R. No. 207525, June 18, 2014, 727 SCRA 71, 76.

[19] *Rollo*, pp. 138 and 207.

[20] Jurado, *Comments and Jurisprudence on Obligations and Contracts,* 2010 ed., p. 574, citing Manresa, 5th Ed., Bk. 2, p. 608.

[21] *The Manila Banking Corp. v. Silverio*, 504 Phil. 17, 30 (2005).

to set up the defense of illegality be waived.[22] Accordingly, there is no need for an action to set aside a void or inexistent contract.[23]

A review of the relevant jurisprudence reveals that the Court did not hesitate to set aside a void contract even in an action for unlawful detainer. In *Spouses Alcantara v. Nido*,[24] which involves an action for unlawful detainer, the petitioners therein raised a defense that the subject land was already sold to them by the agent of the owner. The Court rejected their defense and held that the contract of sale was void because the agent did not have the written authority of the owner to sell the subject land.

Similarly, in *Roberts v. Papio*,[25] a case of unlawful detainer, the Court declared that the defense of ownership by the respondent therein was untenable. The contract of sale invoked by the latter was void because the agent did not have the written authority of the owner. A void contract produces no effect either against or in favor of anyone.

In *Ballesteros v. Abion*,[26] which also involves an action for unlawful detainer, the Court disallowed the defense of ownership of the respondent therein because the seller in their contract of sale was not the owner of the subject property. For lacking an object, the said contract of sale was void *ab initio*.

Clearly, contracts may be declared void even in a summary action for unlawful detainer because, precisely, void contracts do not produce legal effect and cannot be the source of any rights. To emphasize, void contracts may not be invoked as a valid action or defense in any court proceeding, including an ejectment suit. The next issue that must be resolved by the Court is whether the assailed lease contract and MOA are null and void.

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[22] Article 1409, New Civil Code.

[23] *Spouses Rongavilla v. Court of Appeals,* 355 Phil. 721, 739 (1998).

[24] 632 Phil. 343 (2010).

[25] 544 Phil. 280 (2007).

[26] 517 Phil. 253 (2006).

The lease contract and the MOA circumvent the constitutional restraint against foreign ownership of lands.

Under Section 1 of Article XIII of the 1935 Constitution, natural resources shall not be alienated, except with respect to public agricultural lands and in such cases, the **alienation is limited to Filipino citizens**. Concomitantly, Section 5 thereof states that, save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines. The prohibition on the transfer of lands to aliens was adopted in the present 1987 Constitution, under Sections 2, 3 and 7 of Article XII thereof. Agricultural lands, whether public or private, include residential, commercial and industrial lands. The purpose of prohibiting the transfer of lands to foreigners is to uphold the conservation of our national patrimony and ensure that agricultural resources remain in the hands of Filipino citizens.[27]

The prohibition, however, is not limited to the sale of lands to foreigners. It also covers leases of lands amounting to the transfer of all or substantially all the rights of dominion. In the landmark case of *Philippine Banking Corporation v. Lui She*,[28] the Court struck down a lease contract of a parcel of land in favor of a foreigner for a period of ninety-nine (99) years with an option to buy the land for fifty (50) years. Where a scheme to circumvent the Constitutional prohibition against the transfer of lands to aliens is readily revealed as the purpose for the contracts, then the illicit purpose becomes the illegal cause rendering the contracts void. Thus, **if an alien is given not only a lease of, but also an option to buy, a piece of land by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership**

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[27] *Krivenko vs. Register of Deeds*, 79 Phil. 461, 473 (1947).

[28] 128 Phil. 53 (1967).

whereby the owner divests himself in stages not only of the right to enjoy the land but also of the right to dispose of it — rights which constitute ownership. If this can be done, then the Constitutional ban against alien landholding in the Philippines, is indeed in grave peril.[29]

In *Llantino v. Co Liong Chong*,[30] however, the Court clarified that a lease contract in favor of aliens for a reasonable period was valid as long as it did not have any scheme to circumvent the constitutional prohibition, such as depriving the lessors of their right to dispose of the land. The Court explained that "[a]liens are not completely excluded by the Constitution from use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortune and misfortune, Filipino citizenship is not impossible to acquire."[31] The lessee-foreigner therein eventually acquired Filipino citizenship.

Consequently, Presidential Decree (P.D.) No. 471 was enacted to regulate the lease of lands to aliens. It provides that the maximum period allowable for the duration of leases of private lands to aliens or alien-owned corporations, associations, or entities not qualified to acquire private lands in the Philippines shall be twenty-five (25) years, renewable for another period of twenty-five (25) years upon mutual agreement of both lessor and lessee.[32] It also provides that **any contract or agreement made or executed in violation thereof shall be null and void *ab initio*.**[33]

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[29] *Id.* at 67-68.

[30] 266 Phil. 645 (1990).

[31] *Id.* at 651.

[32] Section 1, P.D. No. 471.

[33] Section 2, P.D. No. 471; See also R.A. No. 7652 or the Investors' Lease Act which provides that a lease contract in favor of a foreign investor may be granted for a period exceeding fifty (50) years, renewable once for a period of not more than twenty-five (25) years. To be considered as a foreign

Based on the above-cited constitutional, legal and jurisprudential limitations, the Court finds that the lease contract and the MOA in the present case are null and void for virtually transferring the reigns of the land to a foreigner.

As can be gleaned from the contract, the lease in favor of Grilli was for a period of fifty (50) years, automatically extended for another fifty (50) years upon the expiration of the original period. Moreover, it strictly prohibited Fullido from selling, donating, or encumbering her land to anyone without the written consent of Grilli. For a measly consideration of ₱10,000.00, Grilli would be able to absolutely occupy the land of Fullido for 100 years, and she is powerless to dispose the same. The terms of lease practically deprived Fullido of her property rights and effectively transferred the same to Grilli.

Worse, the dominion of Grilli over the land had been firmly cemented by the terms of the MOA as it reinforced Grilli's property rights over the land because, *first*, it brazenly dictated that ownership of the land and the residential building resided with him. *Second*, Fullido was expressly prohibited from transferring the same without Grilli's conformity. *Third*, Grilli would permanently reside in the residential building. *Fourth*, Grilli may capriciously dispose Fullido's property once their common-law relationship is terminated. This right was recently exercised when the land was transferred to Guibone. *Lastly*, Fullido shall be compelled to transfer the land to Grilli if a law would be passed allowing foreigners to own real properties in the Philippines.

Evidently, the lease contract and the MOA operated hand-in-hand to strip Fullido of any dignified right over her own

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investor, an alien must make an equity investment in the Philippines through actual remittance of foreign exchange or transfer of assets, whether in the form of capital goods, patents, formulae, or other technological rights or processes, upon registration with the Securities and Exchange Commission (*SEC*). Pursuant to such definition, Grilli cannot be considered as a foreign investor because it was neither shown that he made an equity investment in the country nor that he had registered the same with the SEC. Hence, R.A. No. 7652 cannot apply in his favor.

property. The term of lease for 100 years was obviously in excess of the allowable periods under P.D. No. 471. Even Grilli admitted that "this is a case of an otherwise valid contract of lease that went beyond the period of what is legally permissible."[34] Grilli had been empowered to deprive Fullido of her land's possession, control, disposition and even its ownership. The *jus possidendi, jus utendi, jus fruendi, jus abutendi* and, more importantly, the *jus disponendi* — the sum of rights which composes ownership — of the property were effectively transferred to Grilli who would safely enjoy the same for over a century. The title of Fullido over the land became an empty and useless vessel, visible only in paper, and was only meant as a dummy to fulfill a foreigner's desire to own land within our soils.

It is disturbing how these documents were methodically formulated to circumvent the constitutional prohibition against land ownership by foreigners. The said contracts attempted to guise themselves as a lease, but a closer scrutiny of the same revealed that they were intended to transfer the dominion of a land to a foreigner in violation of Section 7, Article XII of the 1987 Constitution. Even if Fullido voluntary executed the same, no amount of consent from the parties could legalize an unconstitutional agreement. The lease contract and the MOA do not deserve an iota of validity and must be rightfully struck down as null and void for being repugnant to the fundamental law. These void documents cannot be the source of rights and must be treated as mere scraps of paper.

Grilli does not have a cause of action for unlawful detainer

Ultimately, the complaint filed by Grilli was an action for unlawful detainer. Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer, to wit:

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[34] *Rollo*, p. 254.

Who may institute proceedings, and when. — Subject to the provision of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a **lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld** after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[Emphasis Supplied]

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[35]

The Court rules that Grilli has no cause of action for unlawful detainer against Fullido. As can be gleaned from the discussion above, the complainant must either be a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld. In other words, the complainant in an unlawful detainer case must have some right of possession over the property.

In the case at bench, the lease contract and the MOA, from which Grilli purportedly drew his right of possession, were found

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[35] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 516.

to be null and void for being unconstitutional. A contract that violates the Constitution and the law is null and void *ab initio* and vests no rights and creates no obligations. It produces no legal effect at all.[36] Hence, as void contracts could not be the source of rights, Grilli had no possessory right over the subject land. A person who does not have any right over a property from the beginning cannot eject another person possessing the same. Consequently, Grilli's complaint for unlawful detainer must be dismissed for failure to prove his cause of action.

In Pari Delicto Doctrine
is not applicable

On a final note, the Court deems it proper to discuss the doctrine of *in pari delicto*. Latin for "in equal fault," *in pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand *in pari delicto*.[37]

The application of the doctrine of *in pari delicto* is not always rigid. An accepted exception arises when its application contravenes well-established public policy. In this jurisdiction, public policy has been defined as that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good.[38] Thus, whenever public policy is advanced by either party, they may be allowed to sue for relief against the transaction.[39]

In the present case, both Grilli and Fullido were undoubtedly parties to a void contract. Fullido, however, was not barred from filing the present petition before the Court because the matters at hand involved an issue of public policy, specifically

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[36] *Chavez v. PCGG,* 366 Phil. 863, 869 (1999).

[37] *Constantino v. Heirs of Constantino, Jr.,* G.R. No. 181508, October 2, 2013, 706 SCRA 580, 589.

[38] *Maltos v. Heirs of Borromeo,* G.R. No. 172720, September 14, 2015.

[39] *De Los Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405 (1954).

the Constitutional prohibition against land ownership by aliens. As pronounced in *Philippine Banking Corporation v. Lui She*, the said constitutional provision would be defeated and its continued violation sanctioned if the lands continue to remain in the hands of a foreigner.[40] Thus, the doctrine of *in pari delicto* shall not be applicable in this case.

WHEREFORE, the petition is **GRANTED**. The May 31, 2013 Decision of the Court of Appeals and its September 24, 2014 Resolution in CA-G.R. CEB-SP No. 06946 are hereby **REVERSED** and **SET ASIDE**. The complaint filed by Gino Grilli before the Municipal Circuit Trial Court, Dauis-Panglao, Dauis, Bohol, docketed as Civil Case No. 244, is **DISMISSED** for lack of cause of action.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Leonen, JJ.*, concur.

Brion, J., on leave.

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[40] *Supra* note 26, at 69.

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Findings of fact by the trial court — Findings of fact by the trial court, unless tainted with arbitrariness or oversight, are accorded great weight, and are even held to be conclusive and binding. (People *vs*. Rodriguez *y* Grajo, G.R. No. 208406, Feb. 29, 2016) p. 826

Findings of the Court of Tax Appeals — Findings of the Court of Tax Appeals can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part thereof. (Commissioner of Internal Revenue *vs*. GJM Phils. Manufacturing, Inc., G.R. No. 202695, Feb. 29, 2016) p. 816

Perfection of — Failure to perfect an appeal raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. (Nat'l. Transmission Corp. *vs*. Heirs of Teodulo Ebesa, G.R. No. 186102, Feb. 24, 2016) p. 594

— No court could exercise appellate jurisdiction to review the decision of the Regional Trial Court where the party failed to perfect an appeal within the period fixed by law. (Sps. Edmond Lee and Helen Huang *vs*. Land Bank of the Phils., G.R. No. 218867, Feb. 17, 2016) p. 243

— One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules; requirements to perfect an appeal, enumerated. (Nat'l. Transmission Corp. *vs*. Heirs of Teodulo Ebesa, G.R. No. 186102, Feb. 24, 2016) p. 594

— The Regional Trial Court properly dismissed the appeal for failure to prosecute, as it did not lose jurisdiction over the case for failure of the party to perfect its appeal by not paying the full amount of the prescribed appellate docket fees. (Sps. Edmond Lee and Helen Huang *vs*. Land Bank of the Phils., G.R. No. 218867, Feb. 17, 2016) p. 243

— Without payment of docket fees within the prescribed period, the appeal is not perfected; hence, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory. (*Id*.)

Petition for review on certiorari to the Supreme Court under Rule 45 — Can prosper only if the Court of Appeals, in deciding on a Rule 65 petition, fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

Principle of appellate adjudication — Explained. (Estrellado *vs*. Constantino David, G.R. No. 184288, Feb. 16, 2016) p. 29

Questions of fact — Issues as to the correct computation of monetary awards are questions of fact that is beyond the scope of the Court's review under Rule 45 of the Rules of Court. (Limlingan *vs*. Asian Institute Mgm't., Inc. G.R. No. 220481, Feb. 17, 2016) p. 255

Questions of law — Distinguished from questions of fact; whether the CA erred in finding grave abuse of discretion on the part of the NLRC is a question of law. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

ARRESTS

Warrantless arrest — Active participation in the trial and positing defenses without mentioning the alleged warrantless arrest is deemed a waiver of the right to question the arrest. (People *vs*. Lugnasin, G.R. No. 208404, Feb. 24, 2016) p. 701

ATTORNEYS

Attorney-client relationship — A lawyer should conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others; duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general. (Ramiscal *vs*. Atty. Orro (Formerly CBD 09-2507), A.C. No. 10945, Feb. 23, 2016) p. 318

— Imbued with trust and confidence from the moment that the lawyer-client relationship commences; lawyer bound to serve his clients with full competence and to attend to their cause with utmost diligence, care and devotion. (*Id*.)

Code of Professional Responsibility — Display of improper attitude and arrogance toward an elderly constitute conduct unbecoming of a member of the legal profession. (Canlapan *vs*. Atty. Balayo, A.C. No. 10605, Feb. 17, 2016) p. 63

Conduct of — Actions and statements that were mere honest efforts to protect the interest of the client do not amount to obstruction of the administration of justice. (Canlapan *vs*. Atty. Balayo, A.C. No. 10605, Feb. 17, 2016) p. 63

— Violation of the rule on forum shopping warrants six (6) months suspension from legal practice. (*Re*: Decision Dtd. August 19, 2008, 3RD Div., CA In CA-G.R. SP No. 79904 [Hon. Garciano *v*. Hon. Tiamson] *vs*. Atty. Ferrer, A.C. No. 8037, Feb. 17, 2016) p. 48

Misconduct — A lawyer is guilty of misconduct sufficient to justify his suspension or disbarment if he so acts as to be unworthy of the trust and confidence involved in his

official oath and is found to be wanting in that honesty and integrity that must characterize the members of the Bar. (Ramiscal *vs*. Atty. Orro (Formerly CBD 09-2507), A.C. No. 10945, Feb. 23, 2016) p. 318

Suspension — The lifting of suspension from the practice of law is not automatic upon the end of the period stated in the decision; explained. (*Re*: Complaint of Atty. Mariano R. Pefianco against Justices Maria Elisa Sempio Diy, of the CA Cebu, IPI No. 14-222-CA-J, Feb. 23, 2016) p. 362

ATTORNEY'S FEES

Award of — Must have sufficient factual and legal justification. (Hongkong & Shanghai Banking Corp., Ltd. *vs*. Nat'l. Steel Corp., G.R. No. 183486, Feb. 24, 2016) p. 551

CERTIORARI

Petition for — In cases where a petition for certiorari is filed within the 60-day period but after the expiration of the 10-day period under the 2011 National Labor Relations Commission (NLRC) Rules of Procedure, the Court of Appeals (CA) can grant the petition and modify, nullify and reverse a decision or resolution of the NLRC on the ground of grave abuse of discretion. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

Writ of — The Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of *certiorari*. (Quezon City PTCA Federation, Inc. *vs*. Dept. of Education, G.R. No. 188720, Feb. 23, 2016) p. 399

CIVIL SERVICE

Civil Service Examination — Dishonesty; serious dishonesty punishable by dismissal from service; in view of resignation, forfeiture of all benefits due except accrued

leave credits and disqualification from any future government service, deemed proper. (*Re*: Civil Service Examination Irregularity (Impersonation) of Ms. Elena T. Valderoso, [Formerly A.M. No. 13-9-89-MTCC], A.M. No. P-16-3423, Feb. 16, 2016) p. 22

— Impersonation; claims of good faith, rejected. (*Id.*)

Recruitment, selection and promotion of employees — The screening process is that which each department or agency formulates and administers in accordance with the law, rules, regulations and standards set by the Civil Service Commission. (Estrellado *vs.* Constantino David, G.R. No. 184288, Feb. 16, 2016) p. 29

— Three-salary grade limitation for promotion; exceptions; candidate's superior qualifications. (*Id.*)

CODE OF COMMERCE

Letter of credit — A correspondent bank may be a notifying bank, a negotiating bank or a confirming bank depending on the nature of the obligations assumed; distinguished. (Hongkong & Shanghai Banking Corp., Ltd. *vs.* Nat'l. Steel Corp., G.R. No. 183486, Feb. 24, 2016) p. 551

— Defined and construed. (*Id.*)

— Effect of the due presentment of letter of credit and attached document, explained; application. (*Id.*)

— There are usually three transactions and three parties in a transaction involving a letter of credit; elucidated. (*Id.*)

CONTRACTS

Contract of adhesion — As binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely. (Cabanting *vs.* BPI Family Savings Bank, Inc., G.R. No. 201927, Feb. 17, 2016) p. 164

Contract of suretyship — Distinguished from contract of guaranty. (Carodan *vs.* China Banking Corp., G.R. No. 210542, Feb. 24, 2016) p. 750

Doctrine of in pari delicto — An accepted exception arises when the application of the doctrine of *in pari delicto* contravenes well established public policy. (Fullido *vs*. Grilli, G.R. No. 215014, Feb. 29, 2016) p. 840

Loan — Accommodation mortgage, when present. (Carodan *vs*. China Banking Corp., G.R. No. 210542, Feb. 24, 2016) p. 750

Mortgage — Nature thereof, explained. (Carodan *vs*. China Banking Corp., G.R. No. 210542, Feb. 24, 2016) p. 750

Statute of Frauds — An agreement to convey real properties shall be unenforceable by action in the absence of a written note or memorandum thereof and subscribed by the party charged or by his agent; when present. (Heirs of Leandro Natividad *vs*. Mauricio-Natividad, G.R. No. 198434, Feb. 29, 2016) p. 803

CORPORATIONS

Certificate of stock — Certificate of stock evincing shares of stock; discussed. (Teng *vs*. Securities and Exchange Commission, G.R. No. 184332, Feb. 17, 2016) p. 133

Certificate of stock and transfer of shares — Requisites; it is the delivery of the certificate, coupled with the endorsement by the owner or his duly authorized representative that is the operative act of transfer of shares from the original owner to the transferee. (Teng *vs*. Securities and Exchange Commission, G.R. No. 184332, Feb. 17, 2016) p. 133

— Surrender of the original certificate of stock is necessary before the issuance of a new one so that the old certificate may be cancelled. (*Id*.)

— To be valid against third parties and the corporation, the transfer must be recorded in the books of the corporation. (*Id*.)

Corporate rehabilitation — Amended petition for corporate rehabilitation correctly dismissed upon finding that rehabilitation is no longer viable for petitioner. (Viva

Shipping Lines, Inc. *vs*. Keppel Phils. Mining, Inc., G.R. No. 177382, Feb. 17, 2016) p. 95

— Failure of petitioner to implead its creditors as respondents cannot be cured by serving copies of the petition to its creditors. (*Id.*)

— Liquidation as remedy when corporate rehabilitation can no longer be achieved; discussed. (*Id.*)

— Necessity of an economically feasible rehabilitation plan. (*Id.*)

— Remedy available for an insolvent business. (*Id.*)

Interim Corporate Rehabilitation Rule — Rules for appealing corporate rehabilitation decisions; non-compliance warrants dismissal. (Viva Shipping Lines, Inc. *vs*. Keppel Phils. Mining, Inc., G.R. No. 177382, Feb. 17, 2016) p. 95

COURT OF APPEALS

Judgments — The Court of Appeals is well-equipped to render reliable, reasonable, and well-grounded judgments in cases averring grave abuse of discretion amounting to lack or excess of jurisdiction. (Quezon City PTCA Federation, Inc. *vs*. Dept. of Education, G.R. No. 188720, Feb. 23, 2016) p. 399

COURT PERSONNEL

Administrative complaints against — Court personnel who are subject to administrative complaints cannot just ignore directives for them to comment on a complaint, for doing so only shows their utter lack of respect to the court and the institution they represent. (Santos *vs*. Sheriff IV Leaño, Jr. [Formerly OCA IPI No. 11-3648-P], A.M. No. P-16-3419, Feb. 23, 2016) p. 342

Conduct — Must avoid any impression of impropriety, misdeed or negligence in the performance of their official functions. (Noces-De Leon *vs*. Florendo [Formerly OCA IPI No. 13-4055-P], A.M. No. P-15-3393, Feb. 23, 2016) p. 334

— To maintain the people's respect and faith in the judiciary, Court employees should be models of uprightness, fairness and honesty, and they should avoid any act or conduct that would diminish public trust and confidence in the Courts. (*Id.*)

Grave misconduct and dishonesty — Court personnel prohibited from soliciting or accepting any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions; violation thereof constitutes grave misconduct and dishonesty. (Noces-De Leon *vs.* Florendo [Formerly OCA IPI No. 13-4055-P], A.M. No. P-15-3393, Feb. 23, 2016) p. 334

— Failure of the respondent-employee to file a Comment deemed an implied admission of the charges against him. (*Id.*)

— Gross misconduct and dishonesty are grave offenses that are punishable by dismissal even for the first offense. (*Id.*)

Grave misconduct and serious dishonesty — The acts of stealing and discounting the check of a co-employee amount to grave misconduct and serious dishonesty, and violate the time-honored constitutional principle that a public office is a public trust. (Atty. Aquino *vs.* Alcasid, [Formerly OCA IPI No. 10-3381-P], A.M. No. P-15-3361, Feb. 23, 2016) p. 325

Grave offenses — Grave misconduct, dishonesty, inefficiency and incompetence in the performance of official duties are considered grave offenses; proper penalty. (Atty. Aquino *vs.* Alcasid, [Formerly OCA IPI No. 10-3381-P], A.M. No. P-15-3361, Feb. 23, 2016) p. 325

Inefficiency and incompetence — Negligence in the custody of the checks constitutes inefficiency and incompetence in the performance of official duties. (Atty. Aquino *vs.* Alcasid, [Formerly OCA IPI No. 10-3381-P], A.M. No. P-15-3361, Feb. 23, 2016) p. 325

Withdrawal of complaint — Complainant's withdrawal of his complaint does not dismiss the administrative case against respondents nor divests the court of its jurisdiction to determine the administrative liabilities of its officers and employees; rationale. (Santos *vs*. Sheriff IV Leaño, Jr. [Formerly OCA IPI No. 11-3648-P], A.M. No. P-16-3419, Feb. 23, 2016) p. 342

COURTS

Courts of general jurisdiction — Designated special commercial courts and the regular Regional Trial Courts (RTCs) are both conferred by law the power to hear and decide civil cases in which the subject of the litigation is incapable of pecuniary estimation. (Concorde Condominium, Inc. *vs*. Baculio, G.R. No. 203678, Feb. 17, 2016) p. 174

DAMAGES

Interest — Legal interest is six percent (6%) per annum. (Cabanting *vs*. BPI Family Savings Bank, Inc., G.R. No. 201927, Feb. 17, 2016) p. 164

DEPARTMENT OF EDUCATION

Department Order No. 54, Series of 2009 (DO 54) — DO 54 ensures that Parents-Teachers Associations (PTAs) exist and function in a manner that remains consistent with the articulated purposes of PTAs under the Child and Youth Welfare Code and the Education Act of 1982. (Quezon City PTCA Federation, Inc. *vs*. Dept. of Education, G.R. No. 188720, Feb. 23, 2016) p. 399

— DO 54 specifically limits a school head's competence to recommend cancellation of recognition to the instances defined by Art. IX thereof as prohibited activities. (*Id.*)

— Entitled Revised Guidelines Governing Parents-Teachers Associations at the school level; scope and purpose. (*Id.*)

— Non-publication does not invalidate DO 54. (*Id.*)

— The involvement of school heads is limited to the initial stages of formation of PTAs, for once organized, the

school heads hold no power over PTAs as they are limited to acting in an advisory capacity. (*Id.*)

— The Parents-Teachers Community Associations (PTCAs) do not stand on the same footing as Parents-Teachers Associations (PTAs) and their existence is not statutorily mandated. (*Id.*)

EMPLOYER-EMPLOYEE RELATIONSHIP

Illegal suspension — Award of attorney's fees already attained finality; rationale for the award of attorney's fees. (Limlingan *vs.* Asian Institute Mgm't., Inc. G.R. No. 220481, Feb. 17, 2016) p. 255

— Imposition of legal interest on the monetary award, warranted. (*Id.*)

— Legal interest of 12% and 6% per annum, imposed. (*Id.*)

Management prerogative — Doctrine, defined; when not established. (Capin-Cadiz *vs.* Brent Hospital and Colleges, Inc., G.R. No. 187417, Feb. 24, 2016) p. 610

— Management prerogative is not unbridled and limitless, and it cannot justify violation of law or the pursuit of any arbitrary or malicious motive. (Phil. Airlines, Inc. *vs.* Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

EMPLOYMENT, TERMINATION OF

Illegal dismissal — A finding of illegal dismissal, by itself, does not establish bad faith to entitle an employee to moral damages. (Capin-Cadiz *vs.* Brent Hospital and Colleges, Inc., G.R. No. 187417, Feb. 24, 2016) p. 610

— Accepting separation pay does not estop the employees from questioning their illegal dismissal, but the separation pay already received will be subtracted from monetary awards. (Phil. Airlines, Inc. *vs.* Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

— An illegally dismissed employee is entitled to reinstatement with full backwages, and damages if dismissal was done in bad faith. (*Id.*)

— Dismissal of the employee is unjustified, illegal and of no effect where the employer acted in bad faith, and failed to sufficiently and convincingly establish the grounds for termination. (*Id.*)

— Moral, nominal and exemplary damages, attorney's fees and interest at the legal rate, when awarded to illegally dismissed employees. (*Id.*)

— Period for computing separation pay and backwages, explained. (Capin-Cadiz *vs*. Brent Hospital and Colleges, Inc., G.R. No. 187417, Feb. 24, 2016) p. 610

Immorality as a ground — Jurisprudence has already set the standard of morality with which an act should be gauged – it is public and secular, not religious. (Capin-Cadiz *vs*. Brent Hospital and Colleges, Inc., G.R. No. 187417, Feb. 24, 2016) p. 610

Prior notice requirement — A hearing is an unnecessary condition in determining the legality of dismissal due to redundancy or retrenchment, as the employer has no obligation to provide the employees the opportunity to disprove the business and financial reasons for termination. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

— For purposes of complying with the 30-day prior notice requirement, the law only looks at when the notice was given. (*Id.*)

— Redundancy and retrenchment, distinguished. (*Id.*)

Redundancy — Requires good faith in abolishing the redundant position, and to establish good faith, the employer must provide substantial proof that it is over manned. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

Redundancy or retrenchment — For redundancy or retrenchment to be a valid ground for termination of work, the employer must give separation pay to the affected employees and must also serve a written notice on both the employees and the Department of Labor and Employment at least

one (1) month before the intended date of redundancy or retrenchment. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

Retrenchment — Dismissal on the ground of retrenchment, criteria that must be met to be valid. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

— For there to be a valid retrenchment, the employer must exercise its management prerogative in good faith for the advancement of its interest and not to defeat or circumvent the employee's right to security of tenure. (*Id*.)

— The employer has the burden of proving the validity of its termination due to alleged business losses; photocopied financial statements should not be considered at face value, especially absent an affidavit of a witness, where the same would be used to justify the retrenchment of employee's livelihood. (*Id*.)

— The employer has the duty to establish, clearly and satisfactorily, all the elements for a valid retrenchment. (*Id*.)

— The retrenchment must not only be reasonably necessary to avert serious business losses, but it must also be made in good faith and without ill motive. (*Id*.)

— To justify retrenchment, the employer must prove by clear and satisfactory evidence that there are existing or imminent substantial, serious, actual and real business losses, not merely *de minimis.* (*Id*.)

EVIDENCE

Presentation of — No deprivation of due process where party was given several opportunities but failed to present evidence. (Cabanting *vs*. BPI Family Savings Bank, Inc., G.R. No. 201927, Feb. 17, 2016) p. 164

EXPROPRIATION

Just compensation — A function addressed to the discretion of the courts and may not be usurped by any other branch

or official of the government; application. (Rep. of the Phils. *vs*. C.C. Unson Co., Inc., G.R. No. 215107, Feb. 24, 2016) p. 770

— Defined. (*Id*.)

— If as a result of the expropriation, the remaining portion of the property of the owner suffers from impairment or decrease in value, consequential damages were to be awarded; explained. (*Id*.)

FORUM SHOPPING

Commission of — Committed where multiple cases based on the same action and with the same prayer were filed. (*Re*: Decision Dtd. August 19, 2008, 3RD Div., CA In CA-G.R. SP No. 79904 [Hon. Garciano *v*. Hon. Tiamson] *vs*. Atty. Ferrer, A.C. No. 8037, Feb. 17, 2016) p. 48

INTERESTS

Circular No. 799, Series of 2013 by the BSP Monetary Board — The Circular reduced the rate of interest for the loan or forbearance of money, goods or credits; the rate allowed in judgments, in the absence of an express contract as to such rate of interest, reduced from 12% to 6% per annum; application. (Heirs of Leandro Natividad *vs*. Mauricio-Natividad, G.R. No. 198434, Feb. 29, 2016) p. 803

JUDGES

Administrative complaint against — An administrative complaint is not the remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

Gross ignorance of the law — To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of a judge in the performance of his official duties is contrary to existing law and jurisprudence

but, most importantly, he must be moved by bad faith, fraud, dishonesty, or corruption. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

Partiality — Mere suspicion of partiality is not enough, as there must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

Power to intervene — A judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter, but this power should be sparingly and judiciously used. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

JUDGMENTS

Annulment of — Covers civil actions of the Regional Trial Courts (RTCs) where the ordinary remedies are no longer available without fault of the petitioner. (Sps.Teaño *vs*. Mun. of Navotas, G.R. No. 205814, Feb. 15, 2016) p. 1

— Must be based only on the grounds of extrinsic fraud and of lack of jurisdiction commenced by a verified petition that specifically alleges the facts and the law relied upon for annulment. (*Id*.)

JURISDICTION

Jurisdiction over the subject matter of a case — Conferred by law and determined by the allegations in the complaint. (Concorde Condominium, Inc. *vs*. Baculio, G.R. No. 203678, Feb. 17, 2016) p. 174

JUSTICES

Presumption of regular performance of duties — Absent evidence to the contrary, the presumption that a justice regularly performed his or her duties prevails. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

JUSTICES AND JUDGES

Administrative charge of partiality — As long as decisions made and opinions formed in the course of judicial proceedings are based on the evidence presented, the conduct observed by the magistrate, and the application of the law, such opinions – even if later found to be erroneous – will not sustain a claim of personal bias or prejudice on the part of the judge. (*Re*: Complaint of Atty. Mariano R. Pefianco against Justices Maria Elisa Sempio Diy, of the CA Cebu, IPI No. 14-222-CA-J, Feb. 23, 2016) p. 362

— The complainant carries the burden of proof to show by clear and convincing evidence that the conduct of the judges or the justices is clearly indicative of arbitrariness and prejudice before the questioned conduct could be stigmatized as biased and partial. (*Id.*)

Administrative charges — When dismissed. (*Re*: Complaint of Atty. Mariano R. Pefianco against Justices Maria Elisa Sempio Diy, of the CA Cebu, IPI No. 14-222-CA-J, Feb. 23, 2016) p. 362

Extra-Judicial Source Rule — In order for a claim of partiality to be upheld against the judges or justices, the resulting order, resolution, or decision must have been rendered based on an "extrajudicial source." (*Re*: Complaint of Atty. Mariano R. Pefianco against Justices Maria Elisa Sempio Diy, of the CA Cebu, IPI No. 14-222-CA-J, Feb. 23, 2016) p. 362

KIDNAPPING FOR RANSOM

Elements — The *corpus delicti* in the crime of kidnapping for ransom is the fact that an individual has been deprived of liberty for the purpose of extorting ransom. (People *vs*. SPO1 Gonzales, Jr., G.R. No. 192233, Feb. 17, 2016) p. 149

— Time is not a material ingredient therein. (*Id*.)

— When established. (People *vs*. Lugnasin, G.R. No. 208404, Feb. 24, 2016) p. 701

Proper penalty and damages — Proper penalty is *reclusion perpetua* without eligibility for parole; proper damages are civil indemnity, moral damages and exemplary damages with 6% interest from finality of decision until full payment. (People *vs*. SPO1 Gonzales, Jr., G.R. No. 192233, Feb. 17, 2016) p. 149

LABOR CODE

Interpretation — The liberal application rule can be invoked by the workers themselves, not the management or employer. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

LAND REGISTRATION

Application for registration — Person applying for registration has the burden of proof to overcome the presumption of ownership of lands of the public domain. (Central Mindanao University *vs*. Rep. of the Phils., G.R. No. 195026, Feb. 22, 2016) p. 274

Compulsory registration — For the President's directive to file the necessary petition for compulsory registration of parcels of land be considered as an equivalent of a declaration that the land is alienable and disposable, the subject land, among others, should not have been reserved for public or quasi-public purposes. (Central Mindanao University *vs*. Rep. of the Phils., G.R. No. 195026, Feb. 22, 2016) p. 274

Public domain — A public land remains part of the inalienable public domain unless it is shown to have been reclassified and alienated by the State to a private person. (Central Mindanao University *vs*. Rep. of the Phils., G.R. No. 195026, Feb. 22, 2016) p. 274

— Absent proof that the land reservations have been reclassified as alienable and disposable, the said land remains part of inalienable public domain; hence, they are not registrable under the Torrens system. (*Id*.)

— Lands of the public domain classified as reservations remain to be property of the public dominion until withdrawn from the public or quasi-public use for which they have been reserved, by act of Congress or by proclamation of the President, or otherwise positively declared to have been converted to patrimonial property. (*Id*.)

— What constitutes alienable and disposable land of the public domain. (*Id*.)

Reconstitution of title — Partakes of a land registration proceeding; determines whether or not the certificate of title sought to be reconstituted is authentic, genuine, and in force and effect at the time it was lost or destroyed. (Luriz *vs*. Rep. of the Phils., G.R. No. 208948, Feb. 24, 2016) p. 720

MARRIAGE

Psychological incapacity — As a ground to nullify marriage; explained. (Rep. of the Phils. *vs*. Romero II, G.R. No. 209180, Feb. 24, 2016) p. 737

— Conditions required. (*Id*.)

MOTION TO DISMISS

Nature — The inquiry is limited only into the sufficiency, not the veracity of the material allegations in the complaint; elucidated. (Magellan Aerospace Corp. *vs*. Phil. Air Force, G.R. No. 216566, Feb. 24, 2016) p. 788

Three-day notice rule — The three-day notice requirement in motions is mandatory for being an integral component of procedural due process; exception; when present. (Magellan Aerospace Corp. *vs*. Phil. Air Force, G.R. No. 216566, Feb. 24, 2016) p. 788

MURDER

Damages — Awards for civil indemnity, moral damages, and exemplary damages, present. (People *vs*. De La Cruz *y* Santos, G.R. No. 207389, Feb. 17, 2016) p. 231

— Proper formula for the computation of recoverable damages for loss of earning capacity. (*Id*.)

Qualifying/aggravating circumstances — Evident premeditation; not appreciated in the absence of evidence that the killing was preceded by calm judgment to carry out the crime. (People *vs*. De La Cruz *y* Santos, G.R. No. 207389, Feb. 17, 2016) p. 231

Qualifying circumstances — Treachery; present as attack comes suddenly without chance to retaliate or repel the same. (People *vs*. De La Cruz *y* Santos, G.R. No. 207389, Feb. 17, 2016) p. 231

NATIONAL ECONOMY AND PATRIMONY

Prohibition of land transfer to foreigners — The purpose of prohibiting the transfer of lands to foreigners is to uphold the conservation of our national patrimony and ensure that agricultural resources remain in the hands of Filipino citizens; explained. (Fullido *vs*. Grilli, G.R. No. 215014, Feb. 29, 2016) p. 840

1997 NATIONAL INTERNAL REVENUE CODE (NIRC)

Assessment of internal revenue taxes — If the taxpayer received an assessment from the Bureau of Internal Revenue (BIR), the *onus probandi* shifted to the BIR to show by contrary evidence that the taxpayer indeed received the assessment in the due course of mail. (Commissioner of Internal

Revenue *vs.* GJM Phils. Manufacturing, Inc., G.R. No. 202695, Feb. 29, 2016) p. 816

— When an assessment is made within the prescriptive period, receipt by the taxpayer may or may not be within said period, but the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. (*Id.*)

— While it is true that an assessment is made when the notice is sent within the prescriptive period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved, as mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. (*Id.*)

NATIONAL LABOR RELATIONS COMMISSION

Labor disputes — Grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Austria *vs.* Crystal Shipping, Inc., G.R. No. 206256, Feb. 24, 2016) p. 674

OBLIGATIONS

Delay — When delay to deliver or to do something incurred. (Hongkong & Shanghai Banking Corp., Ltd. *vs.* Nat'l. Steel Corp., G.R. No. 183486, Feb. 24, 2016) p. 551

OFFICE OF THE OMBUDSMAN

Determination of probable cause — Judicial intervention proper in case of grave abuse of discretion. (PCGG *vs.* Office of the Ombudsman, G.R. No. 193176, Feb. 24, 2016) p. 643

Duties — The duty of the Ombudsman in the conduct of a preliminary investigation is to establish the existence of probable cause to file an information in court against the accused. (PCGG *vs.* Office of the Ombudsman, G.R. No. 193176, Feb. 24, 2016) p. 643

OFFICE OF THE SOLICITOR GENERAL (OSG)

Functions — As representative of the Government who initiated the case for cancellation of sales patents and the corresponding certificates of title, the OSG is the principal counsel that must be furnished copies of all court orders, notices and decisions. (Rep. of the Phils. *vs*. CA, G.R. No. 210233, Feb. 15, 2016) p. 15

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensation and benefits — Third-doctor referral in case of conflicting findings of company-designated physician and personal physician; findings of the former prevail in non-observance of third-doctor referral unless clearly biased in favor of employer. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

Disability benefits — Compensability of an ailment does not depend on whether the injury or disease was pre-existing at the time of employment but rather if the disease or injury is work-related or aggravated the claimant's condition; elucidated. (Austria *vs*. Crystal Shipping, Inc., G.R. No. 206256, Feb. 24, 2016) p. 674

— To be compensable, two elements must concur; explained. (*Id*.)

Occupational diseases — Claim for disability benefits; requisites. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

— Conditions for compensability in case of disability or death. (*Id*.)

Total and permanent disability — Present if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days except where such injury or sickness requires medical attendance beyond 120 days but not to exceed 240 days. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

Work-related illness — Illnesses not listed in Sec. 32 of the contract are disputably presumed as work-related. (Nonay *vs*. Bahia Shipping Services, Inc., G.R. No. 206758, Feb. 17, 2016) p. 197

PLEADINGS

Filing of a reply — The filing of a reply in order to comment on a motion for reconsideration is a matter subject to the Anti-Graft Court's sound discretion and its denial alone does not amount to bias or partiality. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

PUBLIC LAND ACT (C.A. NO. 141)

Judicial confirmation of title — The agricultural land subject of the application needs only to be classified as alienable and disposable as of the time of the application, but the applicant's possession under a bona fide claim of ownership must date back to June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Sogod Dev't. Corp., G.R. No. 175760, Feb. 17, 2016) p. 78

RAPE

Elements — When established; imposable penalty. (People *vs*. Rodriguez *y* Grajo, G.R. No. 208406, Feb. 29, 2016) p. 826

Qualified rape — Age as a qualifying circumstance; the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof, in their absence, similar authentic documents may be presented such as baptismal certificates and school records; when not established. (People *vs*. Sariego, G.R. No. 203322, Feb. 24, 2016) p. 659

— Elements. (*Id*.)

— When established; imposable penalty. (People *vs*. Yamon Tuando, G.R. No. 207816, Feb. 24, 2016) p. 687

RIGHTS OF THE ACCUSED

Right to be informed of the nature and cause of the accusation against him — Application. (People *vs.* Yamon Tuando, G.R. No. 207816, Feb. 24, 2016) p. 687

RULES OF PROCEDURE

Interpretation — Rules of procedure are mere tools to expedite the decision or resolution of cases and if their strict and rigid application would frustrate rather than promote substantial justice, then it must be avoided; application. (Capin-Cadiz *vs.* Brent Hospital and Colleges, Inc., G.R. No. 187417, Feb. 24, 2016) p. 610

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Succession — Heirs succeed not only to the rights of the decedent but also to his obligations; when established. (Heirs of Leandro Natividad *vs.* Mauricio-Natividad, G.R. No. 198434, Feb. 29, 2016) p. 803

SHERIFFS

Conduct — A sheriff who is physically unable to fulfill his duties due to his ill health, cannot designate another sheriff to implement the writ, but should instead inform the court; sheriffs who accepted the designation without the requisite order from the court violate Administrative Circular No. 12. (Santos *vs.* Sheriff IV Leaño, Jr. [Formerly OCA IPI No. 11-3648-P], A.M. No. P-16-3419, Feb. 23, 2016) p. 342

— A sheriff's failure to implement a writ of execution is characterized as gross neglect of duty, and his failure to liquidate expenses is considered simple misconduct, while the solicitation of sheriff's expenses without observing the proper procedure constitutes dishonesty or extortion; proper penalties. (*Id.*)

— Duties in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Sec. 10(c) and (d) and Sec. 14 of the Rules of Court. (*Id.*)

— Litigants are not obliged to request the sheriff to execute the writ or to "follow up" a writ's implementation, as the sheriff's duty in the execution of a writ is purely ministerial. (*Id.*)

— Sheriffs are held to the highest standards in the performance of their duties, keeping in mind that "public office is a public trust." (*Id.*)

— Sheriffs must perform their duties with utmost honesty and diligence considering that even the slightest deviation in the prescribed procedure may affect the rights and interests of the litigants; penalty of dismissal from service, imposed. (*Id.*)

STATE

Power to regulate associations — In pursuit of public interest, the State can set reasonable regulations – procedural, formal, and substantive – with which organizations seeking State imprimatur must comply. (Quezon City PTCA Federation, Inc. *vs*. Dept. of Education, G.R. No. 188720, Feb. 23, 2016) p. 399

SUPREME COURT

Duties — The Court will not be the instrument to destroy the reputation of any member of the bench or any of its employees by pronouncing guilt on mere speculation. (*Re*: Verified Complaint Dtd. July 13, 2015 of Alfonso V. Umali, Jr. *vs*. Hon. Jose R. Hernandez, Associate Justice, Sandiganbayan, IPI No. 15-35-SB-J, Feb. 23, 2016) p. 375

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Prohibitions — Sales or transfers of lands made in violation of P.D. No. 27 in favor of persons other than the government by other legal means or to the farmer's successor by hereditary succession are null and void; a relocation agreement, or an exchange or swapping of properties is a transfer or conveyance of property prohibited under P.D. No. 27. (Abella *vs*. Heirs of Francisca C. San Juan, G.R. No. 182629, Feb. 24, 2016) p. 533

Transfer of land — An Agreement which contravened the prohibition under P.D. No. 27 on the transfer of land cannot be validated by DAR's approval thereof; rationale. (Abella *vs*. Heirs of Francisca C. San Juan, G.R. No. 182629, Feb. 24, 2016) p. 533

— Parties are not estopped from questioning the validity of an Agreement where the same contravened the prohibition under P.D. No. 27 on the transfer of land, as estoppels cannot be predicated on a void contract or on acts which are prohibited by law or are against public policy. (*Id.*)

— The prohibition under P.D. No. 27 on the transfer of land applies even if the farmer-beneficiary has not yet acquired absolute title to the land, and the protection begins upon the promulgation of the law; rationale. (*Id.*)

— The prohibition under P.D. No. 27 on the transfer of land extends to the rights and interests of the farmer in the land even while he is still paying the amortizations on it, as default or non-payment is not a ground for cancellation of the Certificate of Land Transfer (CLT). (*Id.*)

— Title to the land acquired pursuant to P.D. No. 27 cannot be transferred except to the government or by hereditary succession, to his successors. (*Id.*)

UNFAIR LABOR PRACTICE

Burden of proof — The union has the burden to prove by substantial evidence, its allegation of unfair labor practice. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

Commission of — For there to be unfair labor practice, the violation of the Collective Bargaining Agreement must be gross and must be related to the Agreement's economic provisions. (Phil. Airlines, Inc. *vs*. Dawal, G.R. No. 173921, Feb. 24, 2016) p. 474

UNJUST ENRICHMENT

Principle of — Elements; conditions. (Abella *vs*. Heirs of Francisca C. San Juan, G.R. No. 182629, Feb. 24, 2016) p. 533

— The nullity of the Agreement requires return of the parties to the *status quo ante* to avoid unjust enrichment. (*Id.*)

— Two conditions required. (Rep. of the Phils. *vs.* C.C. Unson Co., Inc., G.R. No. 215107, Feb. 24, 2016) p. 770

UNLAWFUL DETAINER

Complaint for — Requirements for filing a complaint for unlawful detainer, enumerated. (Fullido *vs.* Grilli, G.R. No. 215014, Feb. 29, 2016) p. 840

Nature of — Contracts may be declared void even in a summary action for unlawful detainer; application. (Fullido *vs.* Grilli, G.R. No. 215014, Feb. 29, 2016) p. 840

— The only issue to be resolved in an unlawful detainer case is the physical or material possession of the property involved, independent of any claim of ownership by any of the parties. (*Id.*)

WITNESSES

Credibility of — Findings of the trial court, when affirmed by the appellate court, are accorded high respect if not conclusive effect; application. (People *vs.* Lugnasin, G.R. No. 208404, Feb. 24, 2016) p. 701

— In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony; when established. (People *vs.* Sariego, G.R. No. 203322, Feb. 24, 2016) p. 659

— Inconsistencies between a witness' affidavit and testimony do not necessarily impair credibility. (People *vs.* SPO1 Gonzales, Jr., G.R. No. 192233, Feb. 17, 2016) p. 149

— Not affected by inconsistencies that has nothing to do with the elements of the crime. (*Id.*)

— Out-of-court identification; when valid; elucidated. (People *vs.* Lugnasin, G.R. No. 208404, Feb. 24, 2016) p. 701

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